This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

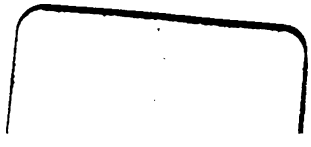
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



DL
ADD
RR
v.4

MARTIN'S

PRACTICE OF CONVEYANCING;

WITH

Forms of Assurances.

BY

CHARLES DAVIDSON,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER AT LAW, AND
FELLOW OF CHRIST'S COLLEGE, CAMBRIDGE.

ECCLESIASTICAL
COMMISSIONERS
FOR ENGLAND
Whitehall Place

Vol. 4

LONDON:
A. MAXWELL & SON, 32, BELL YARD, LINCOLN'S INN,
Law Booksellers and Publishers;
AND A. MILLIKEN, GRAFTON STREET, DUBLIN.

1844.

CONTENTS.

LEASES.

General Observations . . . . . *Page* 1 — General observations.

1. Agreement for a Lease . . . . . 2 — Agreement for a lease.

2. Agreement for an Under-lease to a Builder, the Lease to be granted on the Completion of certain Buildings . . . . . 11 — Agreement for building under-lease.

3. Under-Lease to a Builder of a House in London, which had been built by him under an Agreement, the House being covered in, but not finished . 26 — To a builder.

4. Lease of a Farm (described in a Schedule) for a Term of Years, determinable on the Death of the Lessor. Exception and Reservation of Clay, Fish, Trees, and Bushes, and of Rights of Entry for Sporting, and other special and general Purposes. Reservation (over the usual Rent) of an additional Rent for ploughing Pasture, or misusing Arable Land. Covenants by the Lessee (among others) to do Carriage-work, and furnish Straw for the Lessor,—to warn off Sportsmen trespassing,—to manage the — Of a farm.

Farm in a specified Manner,—not to assign or underlet without License,—that Lessor may resume Land for Planting,—to keep down Rabbits,—to use an ancient Fair. Proviso for Re-entry, Covenants by the Lessor to do certain Acts, and for quiet Enjoyment, till a fixed Day after the End of the Term. Provision for Valuation of Crops left at the End of the Term. 43

Under a power. 5. Lease under a Power of leasing in a Settlement. Exceptions, Reservations, and Covenants, as in the last Precedent, mutatis mutandis 71

Manufactory and machinery. 6. Lease of a Dwelling-house, Manufactory, and Machinery as scheduled. Covenants to paint the Outside and Inside of the Premises at specified Times; and not to carry on offensive Trades. Lessee to have the Option of purchasing the Inheritance at a fixed Price and on certain Terms 84

Of manufactories to be insured as hazardous. 7. Under-lease of Manufactories, with special Provisions for Insurance against Fire, in Case the Buildings or Trade shall be deemed hazardous. The original Lessors insure for the common Risk, but the Payments for extraordinary Risk are to be made by the Lessee, and are reserved as Rent. The Lessee is to rebuild after Damage by Fire, and is to be repaid out of the Insurance Monies recovered. Covenants (amongst others) not to carry on offensive Trades, —and not to assign or underlet without License. All Instruments to be prepared by the Clerk of the original Lessors 95

Of an undivided moiety to the co-tenant. 8. Lease by two Tenants in Common to their Co-tenant, of an undivided Share of Mansion-house and Estates

for the joint Lives of all Parties. General Covenants for the Management of the Lands, Woods, Gardens, and Pleasure-grounds, and other usual Covenants. Covenant by the Lessee to insure the Mansion-house, and lay out the InsuranceMonies in Rebuilding. Agreement that Lessee may, during the Term, receive the Interest of certain Monies, applicable to the Purchase of Lands to be settled to the Uses of those demised, and that such Lands, when purchased, shall be deemed to be included in the present Lease, and be held accordingly . 107

9. Lease of Slate Quarries by a Mortgagee, and his Trustee, and the Mortgagor, who is Tenant for Life, with Power of Leasing. Reservation of different Rents, for different Years, and for different Sorts of Slate: the Rents being regulated beyond a certain Amount by the Quantities of Slate sold, but to be paid on a given Quantity in each Year, whether sold or not. Special Covenants for ascertaining the Amount of Rent. Lessors to have the Option of purchasing Plant at the End of the Term. Lessees to be exempt from Tolls,—to have Power to determine the Term at the End of any Year,—and to pay their Rent by Bills of Exchange on London. Usual Covenants and Clauses as to working, &c. . 120 Slate quarries.

10. Lease by a Dean and Chapter of Collieries and Wayleave, at Rents certain, and Tonnage Rents, varying for different Parts of the Term. Special Powers of Distress and Re-entry. Proviso for making up a Deficiency in the Quantity of Coals for which a Rent certain is payable. Coals used in Collieries to be Rent-free. Covenants by the Lessee not to assign without License—for working the Colliery properly—for keeping Accounts of the Quantities of Coals—for allowing the Lessors to inspect and mea- Collieries by a Dean and Chapter.

sure—and several other Covenants adapted to Leases of Collieries. Covenants by the Lessors for quiet Enjoyment—that Lessees may remove Coals and Machinery after Expiration of Term—Lessors to have the Option of purchasing Machinery. Power to the Lessee to determine the Term at the End of any third Year. Arbitration Clauses . . 140

Of a colliery. 11. Lease of a Colliery and the Appurtenances, with the necessary Powers for working the Mine and selling the Coal. Reservation of Right to use Lessee's Waggon-ways. Reservation of a Rent certain, for a certain Number of Tons to be wrought out of certain Seams in specified Proportions, and similar Reservation of additional Rents for extra Quantities. Powers of Distress and Re-entry. Covenants by Lessee (amongst others) to work Seams in specified Proportions, and to sink certain Pits to certain Seams, and there raise the Coal from those Seams; that Lessor may sink Pits, &c., before the End of the Term. Deficient Workings of any Year to be made up by overplus Workings of succeeding, but not of preceding Years. Usual Covenants by Lessor. Lessee to have the Option of another Pit when vacant. Agreements for Valuation and Purchase at the Commencement and End of the Term, of the live and moveable and fixed Stock 164

Way-leave. 12. Lease of a Way-leave. Reservation of a certain Rent —of Tonnage Rents—of a Compensation Rent—of a Penal Rent—and of a stated Rent in Coals. Usual Covenants and Clauses . . . 178

Stocking-frames. 13. Lease of Stocking-frames 203

PARTITIONS.

General Observations . . . . . 209 General observations.

14. Partition by four Co-heirs of Freeholds and Copyholds —two of the Shares having been settled on Marriage, the Partition as to them is made under Powers in the Settlements. Apportionment in equal Shares of a Rent-charge charged on all the Lands partitioned, with cross Powers of Distress . . 210 Freeholds and copyholds.

15. Partition by Tenants for Life and in Tail of a Manor, Advowson, and freehold Lands—the Manor being taken in Severalty by one Party . . . 229 By tenants for life and in tail of an advowson and lands.

16. Partition as to one Seventh Part of two freehold Estates, held under different Limitations, and in different Shares, by Tenants in Common. The remaining six Seventh Parts being Re-limited to the Persons previously entitled thereto in their former Shares. Covenants as to the Payment of a Life Annuity, and Assignment of a Term to attend the Inheritance . . . . . 244 As to one of seven shares.

17. Partition of Leaseholds by three Tenants in common 253 Leaseholds.

EXCHANGES.

General Observations . . . . . 260 General observations.

Conveyance by way of exchange. 18. Conveyance of Freeholds in Exchange for Freeholds and Copyholds conveyed and covenanted to be surrendered respectively, by Deed of even Date: Proviso negativing the Right of Re-entry on Eviction: Variation where the Right of Re-entry on Eviction is intended to be reserved 260

Under powers. 19. Exchange under Powers, of Lands comprised in a Settlement and Will respectively . . . 264

Of charity lands. 20. Exchange under the Act of the 1 & 2 Geo. 4, c. 92, of Lands belonging to a Charity, with the Forms of the Attestations 273

Petition for charity exchange. 21 Petition by a Charity to the Bishop of the Diocese, praying for a Commission to inquire into a proposed Exchange under the Act of the 1 & 2 Geo. 4, c. 92 288

Notice of exchange of charity lands. 22. Form of Notice of proposed Exchange of Charity Lands 292

Report of commissioners in a charity exchange. 23. Report of a Commission to inquire into a proposed Exchange of Charity Lands . . . 293

Of glebe. 24. Exchange by a Rector of his Parsonage-house and Glebe for other Lands to become Glebe, pursuant to the Statutes 55 Geo. 3, c. 147, and 6 Geo. 4, c. 8, 297

SETTLEMENTS.

General Observations . . . . . 307 General observations.

1. Settlement on Marriage of a Sum of Stock, with the usual Power for varying Securities. The Dividends during the Joint Lives of Husband and Wife to be paid to the Wife for her separate Use, with a Restriction on Anticipation; after the Death of one of them, to the Survivor for Life; after the Death of the Survivor, the Stock and Dividends to be for the Children as the Husband and Wife or the Survivor shall appoint, and in Default of Appointment for Sons attaining Twenty-one, and Daughters attaining that Age or marrying, equally. Hotchpot, Advancement, Maintenance, and Accumulation Clauses. In Default of Children, the Fund is given to the Wife or her Next of Kin, so as to exclude the Husband. Trustees' Receipt Clause. Power to appoint New Trustees. Clauses for the Indemnity of the Trustees and the Payment of their Expenses . . . 309 Of stock for wife, husband, and children, with usual clauses.

2. Appointment by a Father, in contemplation of the Marriage of his Daughter, of part of a Sum of Money raisable under the Trusts of a Term of Years . 330 Appointment of a daughter's portion, in contemplation of her marriage.

3. Assignment to Trustees, in contemplation of Marriage, and upon Trusts to be declared by a Settlement of even Date, of a Sum of Money secured by a Mortgage of Leaseholds, and a Policy of Insurance against Fire, of another Sum secured by a Mortgage of Freeholds, of another secured by a Mortgage of a Life Interest and a Policy of Assurance, and of another appointed to the intended Wife, and raisable under a Term of Years. Covenants for Title and usual Clauses . . 333 Assignment to trustees, in contemplation of marriage, of sums of money outstanding on securities.

4. Conveyance, in contemplation of Marriage, of a Moiety of a Freehold Estate for Lives, and of Policies of As- Conveyance, in contemplation

of marriage, in trust for sale.

surance on the Lives, upon Trust for Sale, with a Declaration of Trust of the Purchase-Money by Reference to a Settlement of even Date. Provisions for a Renewal of the Lease and insuring the new Lives, in case it become necessary before the Sale. Power of Leasing until Sale. Usual Clauses and Covenants 341

Of monies outstanding on securities and to arise from the sale of real estate.

5. Settlement on Marriage, of Sums of Money secured on Mortgage, and of a Sum payable under the Trusts of a Term of Years, and which have been assigned to the Trustees by Deed of even Date; of Monies to be produced by the Sale of Real Estate conveyed to the Trustees by another Deed of even Date, in Trust for Sale; of an Annual Sum covenanted to be paid until the Money raisable under the Term shall be paid; and of the Rents and Profits of the Real Estate until Sale. Usual Trusts for Investment, and for the Benefit of the Husband, Wife, and Children. If no children become entitled, the Husband's Funds revert to himself, the Wife's to herself or her Appointees or Next of Kin, exclusive of her Husband. Usual Trustee Clauses 356

Of personalty, the husband's life interest determining on bankruptcy, &c.

6. Settlement of Shares in Monies out on Mortgage, of a Sum of Stock, and of a Reversionary Interest in Stock belonging to the Wife. A Policy of Assurance effected by the Husband on his own Life, and a Sum of Money which he covenants his Representatives shall pay after his Death, are also settled by reference to the previous Trusts, with a Variation in the ultimate Trusts. Trusts for the separate Use of the Wife for Life, and, after her Death, for the Husband, until he become Bankrupt or Insolvent, or assign his interest, or marry again. Usual Trusts and Powers for the Benefit of Children. Special Trusts over in Default of Children entitled. Power to the Wife, if she survive, to settle Part of the Funds on a Second Marriage. Proviso, that if the Husband in his Lifetime pays to the Trustee the Sum assured on his Life, the Policy shall belong to him.

Covenants and Provisoes as to the Policy of Assurance. Covenants by Husband and Wife for the Settlement of after-acquired Property of the Wife. Usual Trustee Clauses 367

7. Marriage Settlement of a Share of a Sum raisable under the Trusts of a Term, and of another Sum secured by a Bond, and of a Sum for the Payment of which the Father of the intended Husband covenants. An Annuity to be paid during the Joint Lives of the Husband and Wife to the Wife for her separate Use, and the residue of the Income to the Husband, and the whole to the Survivor for Life. After the death of the Survivor, the Funds to be in trust for the Children and remoter Issue as the Husband, Wife, or Survivor appoint, and in Default, for the Children equally. Usual Clauses. General Powers for the Husband and Wife, if there be but one Child, to appoint certain Parts of their respective Fortunes. Power to Trustees to apportion the different Funds, if they shall have been blended. Dower clause. Legitim Clause . . . . . 390 — Of personalty for husband, wife, children, and remoter issue.

8. Settlement of Reversionary Interest in Personal Estate, of an existing Policy of Assurance on the Husband's Life, of the Money to arise by the Sale of Leaseholds assigned by Deed of even Date, of a Sum of Money and Interest secured by the Husband's Covenant, and of a Sum paid by the Wife's Father. Trusts for Investment and varying Securities, the Money on the Covenant not to be called in, except by direction, till the Husband's Death. Usual Trusts for Wife, Husband, and Children, with the Variations required on account of some of the Funds not being payable till the Husband's Death. Special Hotchpot, Advancement, and Maintenance Clauses. Special Provisions in default of Children. Trusts as to the Leaseholds till sold. Power to the Husband and Wife to make Settlements of their respective Shares of the — Of personalty in possession and reversion, with special clauses.

Trust Funds on their marrying again, if there be not more than two Children of the present Marriage. Special Provisoes as to keeping up the Policies on the Husband's Life. Power to the Trustees to settle Accounts and give Releases. . . 405

Purchase-money of real estate conveyed in trust for sale by same deed.

9. Settlement of the Purchase-Money of Real Estate conveyed in Trust for Sale by the same Deed. Trusts for the Husband for Life; for the Wife for Life, or for Widowhood only if there be Issue of the Marriage; for the Children as Husband shall appoint, with usual Trusts in default of Appointment. If no Child, the Fund to belong to the Husband. Rents and Profits till Sale to be applied as the Interest of the Purchase-Money would be applicable. Power of Leasing 428

In exclusion of an eldest or only son or eldest daughter entitled to settled real estate.

10. Settlement of Personalty (subject to the Life Interests of the Husband and Wife), in Trust for all the Children except the eldest or only Son, or the eldest Daughter, becoming entitled to settled Real Estate. Survivorship Clause. Disposition, if only one Child of the Marriage, in favour of such one Child. Trust for Payment of an Annuity by way of Pin-Money to the Wife during her Husband's Life. Power to lay out Monies in the Purchase of Lands to be held as Personal Estate 434

Covenant to surrender copyholds in trust for sale.

11. Covenant on a Marriage to surrender an undivided Moiety, in Reversion expectant on a Life Estate, of Copyholds, and also Copyholds in possession, to the use of Trustees for Sale. Trusts of the Purchase-Money (subject to a Provision for the Life Estate) declared by reference to the Marriage Settlement of even Date. Powers of Partition, and of Leasing for twenty-one Years. Covenants for Title . 442

Of an advowson.

12. Settlement on Marriage, of an Advowson, upon Trust to present the intended Husband on the first Vacancy;

and then, or before, if he consent, or upon his previous Death, to sell, and hold the Purchase-Money upon ordinary Trusts. Covenant by the intended Husband, in certain Events, to assure his Life . 449

13. Articles on the Marriage of a Female Infant, of her Share in Monies to arise from the Sale of a West Indian Estate devised in Trust for Sale, and of Monies secured by the Husband's Covenant. The first Life Estate is given to the Husband, subject to Determination on his Bankruptcy, &c. Proviso that the Money may remain on the Security of the Covenant, so long as the Husband keep his Life adequately assured. Agreements relating to the Sale of the Share of the West Indian Estate, and its Management until a Sale, including a Power to take the Purchase-Money by Instalments . . . . . 455 — Articles on marriage of female infant.

14. Settlement after Marriage, under the Direction of the Court of Chancery, of the Fortune of a Female Infant, a Ward of the Court. Real Estate to be sold; and the Proceeds thereof, and the Personal Estate to be vested in Trustees, in trust to pay a Sum to the Wife for her separate Use, and, subject thereto, in trust for the separate Use of the Wife for Life, and after her Death, for her Children and Issue as she shall appoint, and in default, equally. Shares of Children dying to go to their Issue. In default of Children or Issue, the Funds to go as the Wife shall appoint, and in default of Appointment, to the Husband for Life, and after his Death, to the Wife, or her Next of Kin of her own Blood. Special Clauses as to Maintenance and Advancement . 467 — Of a ward of Chancery after marriage.

15. Settlement of Money given for the Institution of Prizes for Academical Objects. Provisions for the Appointment of Judges for awarding the Prizes, and general Regulations for the Management of the Trust 488 — Of money given for the institution of prizes.

Real estate with usual clauses.

16. Settlement on Marriage, of Freehold and Copyhold Estates, by Appointment and Lease and Release, and Covenant to surrender. Declaration of Uses—as to an Advowson for the Husband's Father for Life—as to the other Hereditaments, to the Use of Trustees for a Term to raise an Annuity by way of Pin-Money—as to all the Hereditaments, (subject as aforesaid), to the Husband for Life—Remainder to Trustees to preserve Contingent Remainders—Limitations to the Wife of two Jointure Rent-Charges, (to take Effect in different Events), with Powers of Distress and Entry—of a Term to secure the same—of a Term to raise Portions for Younger Children, with the usual Clauses as to such Portions—to the first and other Sons of the Marriage in Tail Male—with Remainder in Fee. Power for the Husband to limit a Jointure and charge Portions on any subsequent Marriage. Powers to grant Mining Leases—Leases for Twenty-one Years—Building and Repairing Leases—and Licenses to Copyholders to demise and do other Acts—Powers of Enfranchisement and of Sale and Exchange—Trustee Clauses—Covenants for Title . . . 496

Of real estate equally among the children.

17. Settlement of Reversionary Freehold and Copyhold Property. Limitations to the Husband and Wife successively for Life, with Remainder to the Children as the Husband and Wife or the Survivor shall appoint, and in default of Appointment, to the Children as Tenants in Common in Tail, with Cross Remainders between them in Tail. Usual Powers and Covenants 556

Under powers of jointuring and charging portions.

18. Settlement made in pursuance of Powers of Jointuring and charging Portions given to a Tenant for Life. Demise of the Life Estate to secure an Annuity as Pin-money for the Wife 564

Grant of rent-charge.

19. Grant of a Jointure Rent-Charge to an intended Wife, with Powers of Distress and Entry. Covenant by in-

tended Husband that a Sum of Money shall be paid out of his Personal Estate to his intended Wife, in the Event of her surviving him, to be in Bar of all Claims thereon 575

20. Settlement on Marriage for the Separate Use of the Wife, of her Jointure Rent-charges under a Settlement on a former Marriage, and of a House, Furniture, Jewels, and other Chattels to which she is entitled, partly for Life and partly absolutely, under the Will of her former Husband. Covenant to settle all other present and after-acquired Property for her separate Use . . . . . 579 — Of the wife's life estate and her jewels, &c., for her separate use.

21. Voluntary Settlement of Real and Personal Estate in Favour of the Wife and Children of the Settlor, Maintenance being secured to himself . . 587 — Voluntary.

22. Settlement by a Husband of Real Estate in Favour of himself, his Wife, and Children. The Estates are limited to Trustees for a Term of Years, determinable with the Lives of the Husband and Wife, upon Trusts for the Management of the Estates and Mines, and for the separate Use of the Wife. Assignment of Leases for Years upon Trusts for Renewal, and upon Trusts to correspond with the Limitations of the Freeholds. Assignment of Shares and Stocks upon Trusts for exonerating the Real Estates from Portions charged thereon. Assignment of Machinery and Mining Stock upon Trusts for working the same, and upon Trusts to correspond with the Limitations of the Freeholds 592 — Of real estate, leases, mines, and machinery, and shares in companies.

23. Strict Settlement in favour of the Settlor, his Sons and Daughters—Name and Arms Clause—Power to charge a Gross Sum of Money—Powers of Jointuring and Charging Portions—Power of Leasing—Powers of Partition—Enfranchisement, and Sale and Exchange—Trusts of Money raisable under a Term of Years, and of other Monies for the Payment of In- — Strict settlement.

cumbrances and Annual Sums—Settlement of Chattels as Heir-Looms—Proviso that an Annuity shall be paid after any attempt at Alienation, for the Maintenance of the Annuitant or his Wife and Children—Power to borrow Money under the Trusts of a Term—to deposit Monies at Bankers'—or to invest—to compound with Incumbrancers, and submit to Arbitration—Powers and Trusts for the Management of Estates—Assignment of, and Power of Attorney to collect, Rents already due—Proviso that Creditors shall gain no fresh Lien—Special Trustees' Receipt Clauses—Proviso that Attornies being Trustees shall be paid their Professional Charges . . . 609

PRECEDENTS IN CONVEYANCING.

LEASES.

General observations.

THE following Precedents of Leases will be found to differ, in many instances, from the language and forms of the other precedents in this Collection. Most of the other precedents (as has been previously observed), are "taken from the drafts of a very small number of draftsmen,—and those men, all acting on the same principles and habituated to the use of the same language and forms;" but it was found impossible to obtain a sufficient number of such drafts of leases, because leases are seldom settled or prepared by counsel. The extensive Collections of precedents to which the Editor has access, did not contain a single precedent of a lease, or agreement for a lease, which could be rendered available for his purpose; and he was unable to obtain more than three or four drafts of leases which had been settled by counsel. Even these precedents appeared to the Editor inferior to the rest of his Collection, as they were little more than the common forms cleared of the grosser improprieties, and did not possess that accuracy which has, in the course of time, by constant and progressive improvements, been imparted to the forms daily used by eminent counsel. For the other precedents, the Editor was compelled to have recourse to those common forms of leases which are usually to be met with, and to trust to his own judgment in pruning their redundancies, and correcting their faults. He hopes that they may be found to have been improved by the attention he has paid to them, but he has deemed it right to point out that they cannot be so implicitly relied on as the other precedents in this Collection.

I.

AGREEMENT FOR A LEASE.

AGREEMENT *for a* LEASE (*a*).

Parties.

ARTICLES OF AGREEMENT, made and entered into this —— day of ——, BETWEEN A. B., of &c. [*intended lessor*], of the one part; and C. D., of &c. [*intended lessee*], of the other part; as follows, (that is to say), EACH OF THEM, the said A. B. and C. D., (so far as relates to the acts and deeds by him, his heirs, executors, administrators, or assigns, to be observed or performed), doth hereby agree with the other of them:

Agreement.

To grant a lease for a certain term at a certain rent.

THAT the said A. B., his heirs or assigns, shall and will, before the —— day of —— next, by indenture under his hand and seal, well and effectually demise and lease unto the said C. D., his executors, administrators, and assigns, ALL THAT, &c. [*parcels*], with the fixtures now in, upon, or belonging to the same, and the rights, easements, and appurtenances therewith held, used, or enjoyed for the term of —— years, to be computed from the —— day of ——, and at the yearly rent, clear of all existing and future taxes, rates, deductions, and outgoings whatsoever, of £——, to be payable by four equal payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year of the said term, the first of such payments to be made on the —— day of —— next:

That the lease shall contain certain covenants.

THAT the said indenture of lease shall contain covenants on the part of the said C. D., his executors, administrators, and assigns, for payment of the said net yearly rent of £——, in the parts, on the days, and in manner aforesaid; AND for payment of all existing

(*a*) It has been thought more convenient to class the agreements for leases with the Leases, than with the Agreements. The number of the precedents is extremely small, because agreements ought not, in ordinary cases, to be made substitutes for leases (see infra, note (*c*); and the agreements for building leases, and other special agreements, are, in most cases, too long to be inserted in this Collection.

AGREEMENT FOR A LEASE.

and future taxes, rates, deductions, and outgoings whatsoever, from the —— day of ——: AND to keep the said messuage, buildings, fixtures, and premises, in good and sufficient repair: AND in such good and sufficient repair to deliver up the same, with all new fixtures and other additions, to the said A. B., his heirs or assigns, at the expiration or other sooner determination of the said term: AND to keep the said messuage and buildings, at all times during the said term, insured against loss by fire, in a sum not less than £——: AND, at all times when required, to produce the policy or policies of such insurance, and the receipts for the premiums and other payments in respect of the same, to the said A. B., his heirs and assigns: AND ALSO not to assign or underlet the said premises, without license in writing from the said A. B., his heirs or assigns, AND not to carry on or permit to be carried on on the said premises, any noisome or offensive trade, business, or occupation: THAT the said indenture of lease shall also contain a proviso for re-entry by the said A. B., his heirs or assigns, on nonpayment of the said yearly rent of £——, or any part thereof, for twenty-one days next after any of the said days on which the same or any part thereof shall become due, and whether the same shall have been legally demanded or not, or on the non-observance or non-performance of any of the covenants in the said indenture of lease to be contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed or performed: THAT the said indenture of lease shall contain a covenant on the part of the said A. B., his heirs or assigns, that the said C. D., his executors, administrators, and assigns, may, on due payment by him and them of the said yearly rent, to be reserved as aforesaid, and on the observance and performance of the covenants in the said indenture to be contained, and on his and their part to be observed and performed, quietly enjoy the premises to be demised, without eviction or disturbance by the said A. B., his heirs or assigns, or any person or persons lawfully claiming, or to claim, by, from, under, or in trust for him or them: THAT the said C. D., his executors, administrators, or assigns, shall duly execute and deliver to the said

That the lease shall contain a proviso for re-entry.

—and a covenant for quiet enjoyment.

That lessee shall execute a counterpart.

AGREEMENT FOR A LEASE.

That lease and counterpart shall be prepared by the lessor's solicitor, and the expense equally divided.

A. B., his heirs or assigns, a counterpart of the said indenture of lease: THAT the said indenture of lease and the counterpart thereof shall be prepared by the solicitor of the said A. B., his heirs or assigns; and that the costs and expenses of preparing and executing this agreement, and the said indenture of lease, and the counterpart thereof, and all other costs and expenses of and incidental to the same and to the premises, shall be paid and borne by the said A. B., his heirs or assigns, and the said C. D., his executors, administrators, or assigns, in equal shares (*b*).

That agreement shall not operate as an actual demise.

LASTLY, THAT this agreement or anything herein contained shall not operate, or be deemed or held to operate, as an actual or present demise of the premises hereby agreed to be demised, or to give the said C. D., his executors, administrators, or assigns, any legal interest in the said premises, until the said indenture of lease shall be actually executed (*c*). IN WITNESS, &c.

(*b*) In the absence of special stipulation, a lease is always prepared by the solicitor of the lessor, and at the expense of the lessee. Where, in an agreement for a lease, it was provided that the lease should be drawn, prepared, and executed at the sole expense of the lessor, it was held that, in an action by the lessee on the agreement, it was not necessary to aver that a lease was tendered to the lessor for execution. *Price* v. *Williams*, 1 Mee. & Wels. 6.

Whether an instrument is an agreement for a lease, or a lease.

(*c*) As a lease for a chattel interest may be created by a writing not under seal, a question frequently arises, whether an instrument relating to the creation of such an interest is an actual demise, or an agreement for a future demise. It will, therefore, be convenient to refer briefly to some of the leading principles and cases on the subject, in order to guide the draftsman in preparing agreements for leases; there is no difficulty in preparing a formal lease, but the state of the decisions on the subject renders it a somewhat difficult task to frame an instrument which shall operate merely as an agreement, and shall, at the same time, effectuate the usual intentions of the parties.

What constitutes a lease.

The general rule is, that any words which indicate that one party is to give, and the other to take possession, primâ facie constitute a lease. Thus, the words, "A. agrees to let, and B. agrees to take," make an actual lease from A. to B., if the terms of the tenancy are distinctly stated. (8 Bing. 182). So, too, the words "I will you shall have a lease" on certain terms. (*Maldon's case*, Cro. Eliz. 33). A covenant that a man may hold and enjoy on certain terms, constitutes a lease. (*Tisdale* v. *Essex*, Hob. 34. See too *Drake* v *Munday*,

AGREEMENT FOR A LEASE.

Cro. Car. 207; S. C., W. Jones, 231; *Roe* d. *Jackson* v. *Ashburner*, 5 T. R. 163). The words, "A does *this day* agree to let B. three cottages for ten years, he further agrees to build a brewhouse and make a cellar, at the rent of 35*l.*; he agrees to pay the ground rent; and has this day received 4*l.* from B. in earnest," constitute a lease commencing from the date of the agreement; for as no future day is fixed for the rent to commence, or for the entry of the tenant, both must be intended to commence from the date. *Staniforth* v. *Fox*, 7 Bing. 590; S. C., 5 Moo. & Pay. 589; see too *Doe* d. *Pearson* v. *Ries*, 8 Bing. 178, 182; S. C., 1 Moo. & Scott, 259. The case of *Sturgion* v. *Painter*, Noy, 128, cannot now be considered law.

A reference to a future lease does not per se prevent an instrument from operating as a demise.

A reference to a future lease does not per se take the instrument out of the general rule, if the terms of the future lease are ascertained by the agreement, (*Maldon's case*; *Tisdale* v. *Essex*, ubi supra; *Harrington* v. *Wise*, Cro. Eliz. 486; S. C., 1 Roll. Abr. 847, *Est.* X.; *Baxter* d. *Abrahall* v. *Browne*, 2 Wm. Blackst. 973; *Barry* v. *Nugent*, cited 5 T. R. 165; *Warman* v. *Faithful*, 5 B. & Ad. 1042; S. C., 3 Nev. & Man. 137), for the future lease is considered simply as a matter of further assurance. And the terms of the future lease are sufficiently ascertained by a reference to the terms of an existing lease, under which the intended lessor himself holds, (*Doe* d. *Pearson* v. *Ries*, 8 Bing. 178), or to an abandoned lease between the parties. (*Pearce* v. *Cheslyn*, 4 Ad. & Ell. 225; S. C., 5 Nev. & Man. 652).

Cases in which the reference to a future lease has been held to constitute an agreement executory.

There are, however, several cases in which the reference to a future lease has been held to render the agreement containing it executory, when either the terms of the future lease have been unascertained at the time of entering into the agreement, or something ulterior to the agreement appeared to be contemplated. Thus in *Goodtitle* d. *Estwick* v. *Way*, 1 T. R. 735, words of present demise, followed by an agreement for immediate possession, and with a stipulation that "leases, *with the usual covenants* shall be made and executed by the parties on or before Michaelmas next," were held to constitute merely an agreement. The case of *Roe* d. *Jackson* v. *Ashburner*, 5 T. R. 163, appears to have been decided on the general ground that a stipulation for a future lease prevents an agreement from operating as an actual demise; but this is clearly not law, and the case may perhaps be referred to the circumstance, that an act was to be done by the landlord before the demise would be complete. In *Doe* d. *Bromfield* v. *Smith*, 6 East, 530, words of actual demise, followed by "a clause to be added to the lease to give, &c.," were held to render the instrument an agreement. So, certain conditions of letting being set out, with the stipulation annexed, "a lease to be made on these conditions, with all usual covenants," and signed by the tenant agreeing to take tbe premises subject to the covenants, were considered an agreement. (*Tempest* v. *Rawlings*, 13 East, 18; see too *Colley* v. *Streeton*, 2 Dow. & Ry. 522; *Hamerton* v. *Stead*, 3 B. & C. 478). In a case, which has given rise to much discussion, there was no express stipulation for a future lease,

AGREEMENT FOR A LEASE.

but the tenancy was to be "at and under all usual and customary agreements, as between landlords and tenants, where the premises are situate," and the landlord was to allow a proportionate part of the rent for three pieces of land, which were excepted from the farm agreed to be demised; it was decided that this could only be an agreement, on the ground that otherwise the parties must go to a jury, on every dispute, to see whether any particular covenant was usual or not, and also to determine the rent of the excepted land; and that the parties could not mean to constitute themselves landlord and tenant, till it was ascertained what was the rent, and what were the terms of the tenancy. (*Morgan* d. *Dowding* v. *Bissell*, 3 Taunt. 65; see also *Price* v. *Williams*, 1 Mee. & Wels. 6).

Cases in which the reference to a future lease has been held not to make an agreement executory.

But the foregoing cases cannot be much relied on in the preparation of agreements, for the current of modern decision is certainly to the effect, that, except in cases in which the terms of the future lease are unascertained, a stipulation for a future lease will not render an agreement executory. Thus, where, after words of actual demise, there was an agreement to grant a lease when certain buildings had been finished by the tenant, it was held, that as the tenant had to lay out money on the premises, he took an immediate legal interest, with an agreement for a subsequent more formal assurance. (*Poole* v. *Bentley*, 12 East, 168). If, however, the landlord be to lay out money, that, it seems, is an argument against an actual demise. (*Roe* d. *Jackson* v. *Ashburner*, 5 T. R. 163; *Regnart* v. *Porter*, 7 Bing. 451). An agreement "to grant, seal, and execute a legal and effectual lease," upon specified terms, with a stipulation for the tenant "in the meantime, and until such lease shall be made and executed, to pay the aforesaid yearly rent in manner aforesaid, and to hold the said premises subject to the covenants above mentioned;" and also with a stipulation for the tenant to expend money on the premises, is a present demise. (*Pinero* v. *Judson*, 6 Bing. 206; S. C., 3 Moo. & Pay. 497; see, likewise, *Wilson* v. *Chisholm*, 4 Car. & Pay. 474. See, however, *Bicknell* v. *Hood*, 5 Mee. & Wels. 104). And in a similar case in which there was a stipulation as to the terms on which the tenant was to hold till the lease was granted; and also a proviso that the instrument *should not operate as a lease or actual demise*, it was held that the instrument was a mere agreement. (*Perring* v. *Brook*, 7 Car. & Pay. 360). An agreement to demise an unfinished house, for all the lessor's interest therein, at a specified rent, and with a stipulation for a future lease, with specified covenants, the tenant being to have the benefit of an existing insurance, was held to be a present demise. (*Doe* d. *Pearson* v. *Ries*, 8 Bing. 178; S. C., 1 Moo. & Scott, 259). But as the agreement in this case was for a demise of the whole interest, it seems to have been, in fact, an agreement for an assignment, and ought to have been held to have been an executory agreement, to be carried into effect by a deed of assignment, containing the necessary covenants, and a power of re-entry for the assignor. (See *Palmer* v. *Edwards*, 1 Doug. 187;

AGREEMENT FOR A LEASE.

Doe d. *Freeman* v. *Bateman*, 2 B. & Ald. 168). And where A., a lessee for years, agreed to assign to B., on payment of a sum of money, to hold at the rent and under the covenants and provisoes in the original lease, and a stipulation that in the meantime, until the assignment, B. should perform the covenants in the lease, and save A. harmless, it was held that the instrument was an agreement for an assignment, as the assignment was not to receive its effect (as in many cases) in consideration of a promised payment, but from actual payment and performance of the covenants in the meantime. (*Hartshorne* v. *Watson*, 5 Bing. N. C. 477). The observation, however, of Tindal, C. J., in this case, that "if the instrument had been intended to operate as an immediate assignment, the stipulation for keeping the assignor harmless by the performance of the covenants in the lease would have been unnecessary, for after the assignment the assignor would no longer have been liable to those covenants," appears to be incorrect, for all formal assignments contain a covenant to the same effect. (See ante, Vol. III. p. 338, n (*h*).) An agreement that A. shall let, and B. shall take, and on demand execute a lease and counterpart respectively, with stipulations inferring an immediate possession, was held to be a present demise. (*Walker* v. *Groves*, 15 East, 244). An agreement to let and take a farm on the lessor being satisfied as to the lessee's character, with a clause providing for the preparation of a lease, is an actual demise as soon as the condition as to character is satisfied. (*Chapman* v. *Bluck*, 4 Bing. N. C. 187). And it seems that if a valuation be a condition precedent to the lessee's taking possession, and the lessee (no such valuation having been made) pay a sum of money towards it, and be let into possession, he will be held to be in under the demise. (Id.) But it should be observed, that, in this case, subsequent transactions had occurred to shew that the parties had acted as actual landlord and tenant. And where, after words of actual demise, there was a provision that the rent was to be settled by a valuation, and to be secured by two sureties for the rent; and no valuation was made, and no sureties given, it was held that there was no actual demise. (*John* v. *Jenkins*, 1 Cro. & Mee. 227; S. C. 3 Tyr. 170). In this case it may be observed, that, at the date of the agreement, there was a prior subsisting tenancy between the parties; but after the agreement, the tenant, instead of continuing to hold, quitted the property and removed his goods. In the case of *Alderman* v. *Neate*, 4 Mee. & Wels. 704, an agreement to let, with a stipulation for a future lease and counterpart, to contain "covenants and agreements pursuant to the contract, and such other general clauses as are usually contained in leases," with an option for the lessee, instead of taking a lease, to purchase in fee, was held to operate as a demise. And where a person, being in possession as a yearly tenant, entered into a written agreement with his landlord, in the middle of a current half-year, to take the property for a term of fourteen years, "a lease to be drawn up on the usual terms," it was held

AGREEMENT FOR A LEASE.

that the new agreement operated as a demise, although the effect of it might be to cause a surrender of the previous term, and to merge the rent accruing due for the current half-year. (*Doe* d. *Philip* v. *Benjamin*, 1 Per. & Dav. 440).

Cases in which instruments containing no reference to a future lease do not operate as demises.

It remains to notice the cases in which instruments have been held not to operate as demises, although containing no reference to a future lease. An instrument cannot be held to be a lease, if it appear on the face of it that the intended lessor had not, at the time the agreement was executed, power to grant a lease. Thus, where the property was copyhold, and the agreement contained a stipulation that the intended lessor should procure a license for the lease, it was held that there was no present demise. (*Doe* d. *Coore* v. *Clare*, 2 T. R. 739). The reason, however, assigned by Lord Kenyon in this case was, that if the instrument were held to be a lease, a forfeiture would be incurred, which would be contrary to the intent of the parties. But in a recent case, in which the intended lessor agreed to grant the lease (an under-lease) as soon as he should have obtained his own lease, it was considered clear, on the general principle, that there could be no present demise. (*Hayward* v. *Hassell*, 1 Nev. & Per. 411). So a lease of copyhold for one year, or three years, as the custom allows, with a covenant for constant renewal during a longer term, and that, till the new leases are executed, the lessee may hold and enjoy, does not constitute a lease, because of the forfeiture it would occasion. (*Montague's case*, Cro. Jac. 301 ; *Fenny* d. *Eastham* v. *Child*, 2 Mau. & Sel. 255). An instrument purporting to be a letting for the tenant's life, cannot be a lease, because such an interest, being freehold, cannot pass by an instrument not under seal. Such an instrument will therefore, it seems, be held to be an executory agreement. (*Stone* v. *Rogers*, 2 Mee. & Wels. 443). If too the terms be indefinite, it seems that perhaps a lease for life may be decreed by a court of equity. (*Browne* v. *Warner*, 14 Ves. 156 ; *Doe* d. *Warner* v. *Browne*, 8 East, 165).

If the time when the tenancy is to commence, or the rent to become due, be not fixed by the instrument, it cannot operate as an actual demise. (*Dunk* v. *Hunter*, 5 B. & Ald. 322). So, too, if the instrument do not fix the commencement and duration of the tenancy, there is no demise. (*Clayton* v. *Burtenshaw*, 5 B. & C. 41 ; S. C. 7 Dowl. & Ry. 800). The expression, however, " does *this day* agree to let," will be construed to mean that the tenancy shall commence, and the rent become payable, from the date of the agreement. (*Staniforth* v. *Fox*, 7 Bing. 590 ; S. C. 5 Moo. & Pay. 589 ; see supra, p. 5).

In *Dunk* v. *Hunter*, ubi supra, it was considered that a stipulation relative to the introduction of a clause for purchasing, shewed that the letting was to be by a particular instrument containing such a clause. (See, too, *Doe* d. *Bromfield* v. *Smith*, supra, p. 5). But it may be doubted whether such a stipulation alone would prevent an instrument from operating as a demise. (*Alderman* v. *Neate*, 4 Mee. & Wels. 704).

AGREEMENT FOR A LEASE.

An agreement to demise by indenture, upon certain terms, without any reference to a present holding, is merely an agreement, for there can be no demise till the instrument is executed. (*Hegan* v. *Johnson*, 2 Taunt. 148). And this is the only principle on which agreements for leases can be safely drawn. But it must be observed, that a stipulation in such an agreement, that until the execution of the lease the tenant shall hold on the terms of the lease, will make the instrument operate as a demise. (*Pinero* v. *Judson*, 6 Bing. 206; *Wilson* v. *Chisholm*, 4 Car. & Pay. 474; see supra, p. 6; see, too, *Doe* d. *Warner* v. *Browne*, 8 East, 165; *Browne* v. *Warner*, 14 Ves. 156). But the effect of such a stipulation may, it seems, be qualified by the last stipulation in the text. (*Perring* v. *Brook*, 7 Car. & Pay. 360). Where, in an agreement under seal, the lessor covenanted to grant a lease by indenture, when the tenant should have paid a sum of money, payable by instalments in three years, and the tenant was to have immediate possession, and covenanted to pay a fixed rent till the lease was granted; and that if the rent were in arrear, the landlord might enter and distrain; and the landlord did distrain for rent in arrear:—It was held, that whether there was or was not an actual demise, the relation of landlord and tenant had been created, at least as against the landlord. (*Hancock* v. *Caffyn*, 8 Bing. 358; S. C. 1 Moo. & Scott, 521).

Principles on which agreements for leases should be framed.

Where, however, there was an agreement to grant a lease upon certain specified terms, but there were no words in the agreement which could create an immediate tenancy, except a stipulation "that until such lease shall have been granted as aforesaid, it shall be lawful for the said [*intended lessor*,] his executors, administrators, and assigns, to distrain for all or any part of the rent which may become due from the said [*intended lessee*], his executors, administrators, or assigns, in respect of the said premises, hereby agreed to be demised at any time after the execution of this agreement:"—It was held, that this stipulation did not make the instrument operate as a demise, for if there was an actual demise, there was no occasion for a special power of distress. (*Bicknell* v. *Hood*, 5 Mee. & Wels. 104).

In *Doe* d. *Coore* v. *Clare*, 2 T. R. 739, and supra, p. 8, Lord Kenyon assigned as a reason for holding the instrument in question to be an agreement, that it was stamped as such, and not as a lease; but there can be no doubt that this view of the matter was altogether erroneous, and that the court will first decide what the instrument is, and then see if it is rightly stamped. See several of the cases cited in this note, particularly *Doe* d. *Walker* v. *Groves*, 15 East, 244.

Effect of stamp.

So, too, the form of the agreement is not of much consequence, and it is not material whether it be under seal or not. (*Hancock* v. *Caffyn*, 8 Bing. 358; 1 Moo. & Scott, 521; supra; *Tempest* v. *Rawlings*, 13 East, 18, supra, p. 5). A lease may be constituted by letters. (*Chapman* v. *Bluck*, 4 Bing. N. C. 187).

As to the form of the agreement.

AGREEMENT FOR A LEASE.

Construction guided by subsequent acts.

The subsequent acts of the parties may be of consequence in construing an instrument. (See *Hancock* v. *Caffyn*, 8 Bing. 358; S. C. 1 Moo. & Scott, 521; *Knight* v. *Benett*, 3 Bing. 361; *Cox* v. *Bent*, 2 Bing. 185; *Regnart* v. *Porter*, 7 Bing. 451, and several of the cases previously cited).

Inexpediency of agreements for leases.

In conclusion, it is to be observed, that when an immediate possession is intended, no lawyer ought ever to recommend an agreement for a lease, or to prepare such an instrument, without protesting against it. An agreement should never be made the substitute for a lease, it ought only to be used where a building is to be erected or repaired, or some other act done before the lease is to be granted. The precedent in the text is given only because parties often insist on an agreement in preference to a lease, in order to save expense; and when such is the case, the practitioner must follow a form like that in the text, as the only means of preventing the instrument from being held to be a demise. Perhaps a power of distress may be added. (See *Bicknell* v. *Moore*, supra, p. 9).

Nature of tenancy under an agreement.

Independently of the risk of litigation, which parties incur by entering into agreements for leases, the situation of both parties is much less favourable than under a lease. For the tenant, having no legal interest, is liable to ejectment at law, at the will of the landlord, and can only remedy the injury by a suit in equity. The landlord cannot distrain for his rent, but is driven to bring an action for use and occupation. (*Hegan* v. *Johnson*, 2 Taunt. 148; *Dunk* v. *Hunter*, 5 B. & Ald. 322; *Warman* v. *Faithfull*, 5 B. & Ad. 1042; and many of the cases previously cited). After, however, rent has been paid, a tenancy from year to year is constituted at the rent and upon the terms stated in the agreement, and therefore the landlord may then distrain for rent and may bring an action for a breach of the stipulations contained in the agreement. (*Knight* v. *Benett*, 3 Bing. 368; *Cox* v. *Bent*, 5 Bing. 185; *Tempest* v. *Rawlings*, 13 East, 18).

II.

AGREEMENT *for an* UNDER-LEASE *to a* BUILDER, *the Lease to be granted on the* COMPLETION *of certain Buildings.*

AGREEMENT FOR BUILDING UNDERLEASE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*the intended lessor*], of the one part; and C. D., of &c., [*the intended lessee*], of the other part: WHEREAS, under and by virtue of certain articles of agreement, bearing date the —— day of ——, and made or expressed to be made between E. F. of the one part, and G. H. of the other part, and of certain other articles of agreement, bearing date the —— day of ——, and made or expressed to be made between the said G. H. of the one part, and the said A. B. of the other part, the said A. B. will be entitled, on the performance of certain stipulations or agreements in the said articles contained, (corresponding to the stipulations and agreements hereinafter contained), to a lease or leases from the said E. F., his heirs or assigns, of (among other hereditaments) the piece or parcel of ground and other hereditaments hereinafter more particularly described and covenanted to be demised, such lease or leases to be for the term of —— years from the —— day of ——, and to be at, under, and subject to the several rents, conditions, and covenants in the said articles mentioned, and on the part of the intended lessee, his executors, administrators, and assigns, to be paid, observed, and performed: AND WHEREAS the said A. B. hath some time since, at his own expense, built vaults and other buildings upon the said piece or parcel of ground hereinafter particularly described: AND WHEREAS the said A. B. and C. D. have agreed to enter into such covenants as are hereinafter contained, subject to the provisions and agreements hereinafter contained: NOW

Parties.

Recital of agreement under which the intended lessor, on performance of certain stipulations, will be entitled to a lease.

That intended lessor has built vaults, &c.

—of agreement to enter into covenants.

Witnesseth.

AGREEMENT FOR BUILDING UNDERLEASE.

Consideration.

Covenant by lessor, on the completion of certain buildings to be erected by lessee, to grant a lease of—

—the piece of ground described;

—and of the messuages to be built thereon.

THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the expense which the said C. D. will incur in the erection of the messuages and buildings, hereinafter covenanted to be erected, and of the covenants hereinafter contained on the part of the said C. D.: HE THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his executors, administrators, or assigns, shall and will, when and so soon as the messuages or tenements hereby agreed to be built upon the piece or parcel of ground hereinafter mentioned and described shall be erected, built, and covered in, and all the necessary girders, joists, and other timbers put therein, and the areas thereof formed, and the garden walls of the said messuages or tenements built in conformity to the agreements hereinafter for that purpose contained, and so certified by the surveyor for the time being of the said A. B., his executors, administrators, or assigns, grant unto the said C. D., his executors, administrators, or assigns, at his or their costs and charges, an indenture or indentures of lease, of ALL THAT piece or parcel of ground, situate and being in the parish of ——, in the county of ——, on the east side of a certain new square, intended to be called X. Square, and particularly delineated and described in the plan drawn in the margin of these presents, abutting west on the said square, south on other ground held by the said A. B., under the hereinbefore recited agreements, east on the gardens of three other houses in Y. Square, belonging to the said A. B., and north on a certain street called X. Place, and containing in length in front and rear, from north to south, —— feet —— inches, and in depth from west to east, at the north end thereof, for the first —— feet —— inches thereof, —— feet or thereabouts, and for the remaining —— feet thereof, —— feet or thereabouts: AND also of the several messuages or tenements to be erected and built thereon, pursuant to the agreement hereinafter contained (*a*): and also of the rights, ease-

(*a*) The parcels are given at length in this precedent, in order to

AGREEMENT FOR BUILDING UNDERLEASE.

ments, and appurtenances, FOR THE TERM of —— years, to be computed from the 25th day of December, ——, at and under the rent of a peppercorn for the first two years of the said intended term, (if demanded), and during the remainder of the said term, at and under the yearly rent of £——, to be paid quarterly, clear of the land tax (if any), sewers rate, and all other existing and future taxes, rates, assessments, impositions, and deductions whatsoever: SUCH RENT, if required by the said C. D., his executors, administrators, or assigns, to be apportioned and divided in the lease or leases so to be granted as aforesaid, at the rate of not more than £—— nor less than £—— per annum for each house to be built on the said piece or parcel of ground hereinbefore described: AND SUCH LEASE or leases, and the counterparts thereof, if required as aforesaid, to be prepared by the solicitor of the said A. B., his executors, administrators, or assigns, at the costs and charges in all things of the said C. D., his executors, administrators, or assigns, and to contain such an exception of the running of water and soil as is usually inserted in the leases of the said E. F.; and also covenants for payment of the rent and insurance, and all such other covenants, provisoes, and agreements, as are contained in the printed form of lease signed by the said C. D. as approving thereof, and such other covenants as are mentioned and set forth in the hereinbefore recited articles of agreement, as concern or relate to the premises (*b*):

—for a term, and at rents specified.

—the rent, if required by the lessee, to be apportioned among the houses to be built.

—and the leases to be prepared by lessor, at cost of lessee, and to contain a certain exception and covenants referred to.

---

furnish a guide to the right method of describing the parcels in agreements and leases for building purposes.

(*b*) It is obvious that the preparation of the present agreement was considerably facilitated by the circumstance that the proposed lease was an under-lease, which was to contain, for the most part, such covenants as were contained in the original lease, and that the property to be demised formed part of a large estate, let on lease under uniform leases. There was, therefore, small difficulty in indicating the clauses and covenants which the proposed lease was to contain. But in ordinary cases there is no alternative between specifying each clause and covenant to be contained in the lease, and stipulating that the lease shall contain "such covenants as are usually contained in leases of the like nature." Both methods may give rise to litigation. For if,

Expediency of determining accurately in the agreement the clauses and covenants to be inserted in the lease.

AGREEMENT FOR BUILDING UNDERLEASE.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in

Witnesseth, further covenant by lessee to take the lease, without production of lessor's title.

in the first case, the draftsman contents himself with specifying generally the nature of each clause or covenant, disputes may arise as to the extent and particular wording of them. And in the second case, the question, what are "usual covenants," or "proper covenants," or covenants of any other general class, is nearly certain to be debated. The ground of litigation may undoubtedly be removed by inserting in the agreement all the clauses and covenants literally as they are to stand in the lease, and this is the only safe and correct way. But it often happens that, at the time of executing the agreement, the parties have not given much consideration to the intended clauses and covenants, and are unwilling to defer entering into the agreement till they can be settled. It is often the case too that the agreement to be effectuated is an informal instrument, prepared without legal advice, or any sound consideration of the circumstances: and on a bare contract for a lease, the law implies that there should be proper covenants, and implies too what they are. (15 Ves. 265; *Propert* v. *Parker*, 3 My. & Ke. 280). It will, therefore, be desirable to ascertain what clauses and covenants the law does imply or consider usual or proper, and what are authorized by the particular terms of an agreement.

What are usual covenants and clauses.

In *Church* v. *Browne*, 15 Ves. 263, 265, Lord Eldon appears to have considered that the usual covenants in a lease are almost as well known as those in a conveyance in fee simple. But it is much to be lamented that his Lordship did not specify the covenants which he considered to be usual in leases; for certainly they are not clearly determined by the practice of conveyancers, in such a manner as to enable them to be used as common forms like the covenants in conveyances. It may, however, probably be laid down that all leases ought to contain covenants by the lessee—for payment of the rent (*Taylor* v. *Horde*, 1 Burr. 60, 125)—for payment of such taxes as are not expresly payable by the landlord (see infra, p. 32, n. (*g*))—to keep the premises in repair (2 B. & Ad. 903)—and to yield them up in that condition at the expiration or determination of the term; and a covenant by the lessor for quiet enjoyment as against himself and those claiming through him. In addition to these covenants, leases of houses, for particular purposes, as public-houses, farming and mining leases, and perhaps all leases, (at least where there is a stipulation for usual or customary covenants), ought to contain such covenants and clauses as are usually inserted in such leases, according to the custom of trade or by the local usage of the district where the property is situate. (*Folkingham* v. *Croft*, 3 Anstr. 700; *Vere* v. *Leveden*, 12 Ves. 179; *Jones* v. *Jones*, Id. 186). An agreement for a lease

consideration of the covenant hereinbefore contained, he the said C. D. doth hereby, for himself, his heirs, executors,

AGREEMENT FOR BUILDING UNDERLEASE.

of land, to be built upon by the lessee, would most likely imply an agreement that the lessee should erect some buildings; (*Jones* v. *Verney*, Willes, 169; *Doe* d. *Dymoke* v. *Withers*, 2 B. & Ad. 896); and would perhaps (if the circumstances should admit) imply that such buildings should be erected on the same scale and of the same class as other buildings in the neighbourhood. But this is very improbable.

A covenant in an ordinary lease for the lessee to repair, *being allowed timber*, may in some cases be supported by custom. (*Wright* v. *Smith*, 5 Esp. 203; *Doe* d. *Bromley* v. *Bettison*, 12 East, 205). In the latter case, too, a covenant by the lessor to repair a mansion house, was not deemed an unusual covenant, so as to vitiate a lease under a power.

It is apprehended that in the absence of a stipulation as to the rent being net or clear of deductions, that the tenant should covenant to pay all existing and future taxes, rates, and out-goings, except the land tax; and also except the sewer rate, where, under the statute, that is imposed on the landlord, or on both landlord and tenant; and that the landlord should covenant to pay the land tax, and, in such cases as above, the sewer rate. (*Bennett* v. *Womack*, 7 B. & C. 627). At any rate it is settled that a stipulation for a net rent authorizes the insertion in the lease of a covenant, by the tenant, to pay land tax, sewer rates, and all other rates and taxes. (Id.; see too infra, Precedent III., n. (*g*)).

What are unusual covenants and clauses.

A covenant, restraining the lessee from carrying on particular trades without the license of the lessor is not a usual covenant. (*Propert* v. *Parker*, 3 My. & Kee. 280). And an agreement that the lease should contain the usual covenants between landlord and tenant, and that the house should not be converted into a school, was held not to authorize a restriction on the carrying on of other trades. (*Van* v. *Corpe*, 3 My. & Kee. 269; see, too, *Flight* v. *Barton*, 3 My. & Kee. 282; *Cosser* v. *Collinge*, Id. 283). In a lease of a public-house, a proviso for re-entry by the lessor, if any business should be carried on except that of a victualler, is a reasonable proviso; *Bennett* v. *Womack*, 7 B. & C. 627); and so probably is a similar proviso, if the house should cease to be used as a public-house. But it should be observed, that the case was not between lessor and lessee, and that the proviso was held reasonable, because out of ten leases of public-houses produced, six contained such a proviso.

It has been settled, after some conflict of decision, that a covenant restraining alienation, without the license of the lessor, is not a usual or proper covenant to be inserted in a lease without special stipulation. (*Church* v. *Brown*, 15 Ves. 258, where all the earlier cases are cited and commented on; *Browne* v. *Raban*, Id. 528). A pro-

AGREEMENT FOR BUILDING UNDERLEASE.

administrators, and assigns, covenant with the said A. B., his executors and administrators, in manner following, (that is to say), that he the said C. D., his executors, administrators, or assigns, shall and will accept such indenture or indentures of lease, so to be granted as aforesaid, without requiring or investigating the lessor's title, or any title previously to the lease from the said E. F. (*c*): AND DULY execute counterparts thereof, and

—and to execute counter-

viso, that if the premises demised be blown down, or burned by accidental fire, the lessor shall repair or rebuild, or, in default, the lessee shall be at liberty to quit the premises, and be forthwith discharged from payment of rent, is an unusual covenant. (*Doe* d. *Ellis* v. *Sandham*, 1 T. R. 705).

Doubtful covenant.

In a lease, renewable for ever, of lands, (in Ireland), a lessee covenanted, that he and his heirs should, with all their family, live on the demised premises; and that whenever he or they should fail to do so, an additional rent should become payable, with the usual remedies of distress and entry. On a dispute on the reasonableness of this covenant, it was held to be a question properly triable at law, and that a court of equity ought not to interfere or give relief against it. (*Ponsonby* v. *Adams*, 2 Bro. P. C. 431).

Covenants and clauses in leases under powers.

With respect to the proper covenants and clauses to be inserted in leases under powers; see 2 Sugd. Pow. ch. xvii. sect. vii.; Chance on Powers, ch. xvii. sect. vi. b. sect. vii

Lessee's right to require the production of the lessor's title.

(*c*) In *Keech* v. *Hall*, 1 Doug. 21, Lord Mansfield said, "Whoever wants to be secure when he takes a lease, should inquire after and examine the title deeds. In practice, indeed, (especially in the case of great estates), that is not often done, because the tenant relies on the honour of his landlord;" but his Lordship considered that the omission was a want of due diligence. It does not appear, however, whether his Lordship thought, that the contract gave a right to see the title, or whether the nonproduction of the title would be simply a defence to a suit for specific performance, or to an action for breach of the agreement to accept the lease. It was subsequently decided, that, on a contract to grant a lease, there is no engagement necessarily arising by implication of law, that the lessor should shew a good title to grant the lease, or deliver an abstract of title. (*Gwillim* v. *Stone*, 3 Taunt. 433). But in *Temple* v. *Brown*, (6 Taunt. 60), the court considered the general question as undecided, but said there was no doubt of what Lord Mansfield said in *Keech* v. *Hall*, that a person about to take a lease may refuse to take it unless the lessor will satisfy him that he has a good title. It has been subsequently settled, that in every contract *for the sale of an existing lease*, there is an implied undertaking to make out the lessor's title to demise, (ante,

AGREEMENT FOR BUILDING UNDERLEASE.

pay for the same leases and counterparts, and also for this agreement and for a duplicate thereof: AND ALSO that he, the said C. D., his executors, administrators, or assigns, shall and will, on or before the —— day of —— next, at his or their own costs and charges, under the inspection and to the approbation of the surveyor for the time being of the said A. B., his executors, administrators, or assigns, for the time being, well and substantially erect, build, and cover in, on the western side of the said piece or parcel of ground hereinbefore described, three first-rate messuages or tenements fronting X. Square aforesaid, and form and inclose the areas and vaults, and build the garden walls of the said three several messuages or tenements, in conformity in every respect to the plan and elevation drawn in the margin of these presents; the several floors or stories of which said messuages or tenements shall respectively be of the several heights in the clear following, (that is to say), the basement story nine feet, the parlour story eleven feet six inches, the one pair story twelve feet, the second pair story nine feet six inches, and the attics seven feet nine inches; and that he, the said C. D., his executors, administrators, or assigns, shall and

parts and pay expenses.

—and erect certain houses to the satisfaction of lessor's surveyor, and according to a certain plan and specification.

Vol. 3, p. 80); and it seems to be considered in *Souter* v. *Drake*, (5 B. & Ad. 992), that a similar undertaking is implied in every contract to grant a lease, but the point cannot be considered as settled. There can be no doubt, that, except as to leases at rack-rent, it is imprudent to accept a lease from any private person without investigating his title as on a purchase; and in point of fact, if a fine be paid, or money be intended to be laid out by the lessee, it is very usual for him to investigate the lessor's title.

It seems that if, after a contract to grant a lease, it appears that the lessor is unable alone to make a valid demise, by means of an outstanding equitable interest in another party, the lessor is not bound to procure a release from that party to himself; but the lessee must accept a lease from the necessary parties, the lessor paying the extra expense occasioned by the additional party or parties. For where A. agreed to demise to B., and an equitable interest was found to be outstanding in C., B. was decreed to accept a lease from A. and C., A. paying the expense occasioned by C.'s joining. (*Reeves* v. *Gill*, 1 Beav. 375). If the outstanding interest, however, were legal, it may be a question whether this rule would hold good.

AGREEMENT FOR BUILDING UNDERLEASE.

will, on or before the —— day of ——, in like manner, and subject to such inspection and approbation as aforesaid, completely finish the said several messuages or tenements, fit for occupation and use: AND THAT he, the said C. D., his executors, administrators, or assigns, shall and will erect and build the said houses with hard stock bricks, faced with good malm stocks of uniform colour, and with gauged arches to all the apertures, and blanks in the fronts thereof, and in the external flank wall of the most northern or end house, and flush the walls of all the said houses solid with good mortar; [and carry up and continue the same in every respect agreeably to the act of Parliament for building houses in the cities of London and Westminster (*d*)]; and cause the windows of every story of the said houses to range, and be in a line with the windows of the corresponding stories of the several houses hereby agreed to be built in a line or row therewith; and that the cornice, blocking course, and balustrade, thereon respectively, shall be of Portland or Bath stone, and the coping on the party walls of Yorkshire stone: AND ALSO shall and will erect and build each of the said houses in a line with, and so as to range even with the other houses intended to be built on the said piece or parcel of ground, or with such breaks only as the said surveyor, for the time being, of the said E. F., his heirs or assigns, shall think proper: AND SHALL and will make the areas in front of all the said houses nine feet wide in the clear, and make return areas of the like width along the whole of the external flank side of the end or northernmost house, so hereby agreed to be built, and inclose the said areas with Portland kirb and iron rails, similar in size and kind to the kirb and rails which inclose the areas of the houses in Y. square adjoining, and continue a Portland kirb and iron rails, of the same size and kind, along the whole of the external side of the yard or garden of and behind the said

—with specified materials and in a specified manner.

—the houses to range with certain other houses.

As to the formation of areas and inclosing yards.

(*d*) Of course this provision will be omitted in instruments not relating to houses in London or Westminster, or the vicinity, unless it be deemed desirable to retain it as a convenient mode of specification.

AGREEMENT FOR BUILDING UNDERLEASE.

northernmost or end house, so as to inclose the space in front, or by the side of the external fence walls of such end house and garden, of equal width with the said return areas, (except where the same has been already done by the said A. B., and which is to remain his property), and return the said kirb and rails in a line ranging with the rear sides or end of such yard or garden, and shall and will make and inclose the said return areas, and inclose the said spaces in such line and direction, and in such manner in every respect, as the surveyor, for the time being, of the said E. F., his heirs or assigns, shall direct; and also plant the said space in such manner as the said surveyor shall also direct: AND ALSO SHALL and will slate the roofs of the said several houses, and close board the same with yellow deals, of not less than three quarters of an inch thick; and also shall and will put girders of usual and sufficient strength, with proper binding, bridging, and ceiling joists, of usual scantlings, in the principal floors of the said houses and buildings; and where any partitions shall not stand over other partitions, and the surveyor, for the time being, of the said E. F., his heirs or assigns, shall think it necessary to have such partitions trussed, shall and will cause such partitions to be trussed accordingly; and shall and will lay the gutters of the said houses with lead, not less than seven pounds weight to the foot superficial, and put good lead or iron rain-water pipes, as low as the upper part of the parlour stories, to convey the water into the drains; and shall and will build the external flank wall of the said end house, similar in every respect to the front wall thereof, with the exception of windows and galleries, and with such blank windows as the surveyor, for the time being, of the said E. F., his heirs or assigns, shall direct; and so as to correspond as near as may be with the flank wall of the house No. ——, Y. square aforesaid, and face the said flank wall; and also the back fronts of all the said houses, and external walls of all lobby buildings, with good malm stocks of uniform colour, and erect pilasters on the said flank wall of the said end house, and dress the same as well and equal in every respect to the flank wall (except ornament in window openings) of

As to the roofs of the houses.

—the partitions.

—the gutters.

—the external walls.

AGREEMENT FOR BUILDING UNDERLEASE.

the north end house built by the said A. B., being No. ——, on the west side of Y. square aforesaid, and conformably in every respect to the elevation drawn in the margin of these presents, and shall not make or suffer to be made any window, door, or opening whatsoever, in the said flank wall, nor in the external fence wall of the yard or garden, of the said northernmost or end house, without the previous consent of the said E. F., his heirs or assigns; and also, that he, the said C. D., his executors, administrators, or assigns, shall and will use the best Russian, Norway, Swedish, or red pine timber, in all the timbers and floors of the said houses, and lay the floors thereof with good seasoned deals, free from sap, and fit up the same in a good, substantial, and convenient manner, in every respect; and shall and will lay out the parts of the said piece or parcel of ground behind the said houses as and for gardens thereto, and inclose the same with walls seven feet in height above the levels of such gardens, and not less than thirteen inches thick, except the external walls, which are to be eight feet in height above the level of the footway paving in front or by the side thereof, and not less than thirteen inches thick, and face the fence walls of the said gardens next the street, in projecting pannels, with malm facing, and Portland stone coping; and also, that no other erection or building whatsoever shall be erected or built on the said piece or parcel of ground, or any part thereof, than the said three houses hereinbefore agreed to be built, and the said walls to inclose the gardens of the said houses, and no erection or building whatsoever shall be erected or built in or over any or either of the said gardens, or any part thereof; and that no porch or portico shall be built, placed, or made in front or at the side of any of the said houses, save and except a portico at the side of the said end or northernmost house, next X. place aforesaid, to be approved of by the surveyor of the said E. F., his heirs or assigns; and also, that the front windows of the said houses, and the blank windows in the external flank wall of the northernmost or end house, shall have Portland stone cills, and the back windows Yorkshire cills, of such dimensions as the said surveyor, for the time being, of the

—as to the timber to be used.

—as to the gardens.

That no other building than those specified shall be built.

As to porches to the houses.

—and the windows.

said E. F., his heirs or assigns, shall direct; and that all the blocking courses, coping, balustrade, and stringing of the said houses, shall be of Portland stone or cement, the same as the other houses in Y. square: AND ALSO, THAT he, the said C. D., his executors, administrators, and assigns, in the erecting, forming, and building of the said houses and walls, shall not make use of any timber, mortar, bricks, stone, or other materials, but such as shall be new and perfectly sound and good, and shall be approved by the surveyor, for the time being, of the said E. F., his heirs or assigns, and that the mortar to be used in the same buildings respectively shall be made with good and fresh lime, mixed with river sand or road drift: AND ALSO THAT no earth, clay, sand, gravel, or other material whatsoever, shall be dug or got in, or out of, or from the said piece or parcel of ground hereinbefore mentioned and described, except what shall be necessary in order to form the foundations of the said houses and walls, and the said areas and sinking of walls: AND ALSO, THAT nothing shall be done in or upon the said piece or parcel of ground, or any part thereof, which shall or may be, or may grow to the annoyance, nuisance, grievance, damage, or disturbance of the said A. B., his executors, administrators, or assigns, or to the said E. F., his heirs or assigns, or his or their tenants, or any of them, and which he, the said C. D., his executors, administrators, or assigns, shall be required by the said A. B., his executors, administrators, or assigns, or the said E. F., his heirs or assigns, or their or his agents or agent, for the time being, not to do, or permit or suffer to be done: AND ALSO, THAT he, the said C. D., his executors, administrators, or assigns, shall and will, at any time or times hereafter, if he or they shall be required by the said A. B., his executors, administrators, or assigns, or the said E. F., his heirs or assigns, or his or their agent or surveyor for the time being, so to do, but not otherwise, carry away and remove off and from the estate of the said E. F., his heirs or assigns, such earth, sand, gravel, rubbish, and other materials, as the said C. D., his executors, administrators, or assigns, shall or may, at any time hereafter, dig or raise, or bring or place, or cause to be dug or

AGREEMENT FOR BUILDING UNDERLEASE.

—and other particulars.

As to the materials to be employed.

That no materials are to be got out of the land.

—and no nuisance to be created.

—and rubbish (if required) to be removed.

AGREEMENT FOR BUILDING UNDERLEASE.

raised, brought or placed, upon any part of the estate of the said E. F.: AND FURTHER, THAT if any difference, controversy, or dispute whatsoever shall happen to arise between the said A. B., his executors, administrators, or assigns, and the said C. D., his executors, administrators, or assigns, or any of their respective tenants, surveyors, or workmen, in, about, or concerning the setting out the said piece or parcel of ground, or any part thereof, or the frontage or depth, or frontages or depths, of the said several houses, or the lines, directions, depths, breadths, or levels of any of the said areas and spaces, or foot and carriage ways, or concerning any party walls, or party gutters, drains, or sewers, or any other matter or thing whatsoever, in any manner relating to the said piece or parcel of ground, or any part thereof, or to the erecting, building, or finishing any of the said houses and walls to be erected thereon as aforesaid, or any part or parts thereof, or to the construction or meaning of the clauses, articles, or agreements, herein contained, or any of them, or otherwise howsoever, in any manner relating to these presents, or to the premises, the same shall be settled and determined by the surveyor, for the time being, of the said E. F., his heirs or assigns: AND ALSO, THAT the said rent or sum of £—— shall be paid by the said C. D., his executors, administrators, or assigns, unto the said A. B., his executors, administrators, or assigns, by four equal quarterly payments, on the four most usual quarterly days for payment of rent in the year, although the said messuages or tenements, or any of them, shall not be erected by the time hereinbefore limited for the erection of the same respectively, until this agreement shall be determined as hereinafter mentioned (*e*): AND ALSO, THAT if default shall be made in erecting and completing the said messuages or tenements hereinbefore agreed to be

Disputes to be settled by the surveyor of the original lessor.

Rent to be paid on certain days, although the houses are not completed.

Power to the lessor to determine the agreement on his

(*e*) With respect to this provision, see supra, pp. 6, 9. In some of the cases there cited, a provision of this nature was held to make the agreement operate as a present demise, but there cannot be much doubt that in the present instance the circumstances of the case, and the express proviso to the contrary, (infra, p. 24) would prevent such a construction being adopted.

AGREEMENT FOR BUILDING UNDERLEASE.

built, or any of them, within the time in which the same are hereinbefore agreed to be built and completed, it shall be lawful for the said A. B., his executors, administrators, or assigns, at any time thereafter, to give to or leave at the then dwelling-house or last place of abode of the said C. D., his executors, administrators, or assigns, notice in writing of the intention of the said A. B., his executors, administrators, or assigns, to determine and put an end to this agreement; and that immediately after the expiration of two calendar months from the day of such notice having been so given or left, in case the said messuages or tenements, or any of them, shall not then be erected, built, and completely finished, all and every the covenants and agreements herein contained, on the part of the said A. B., his executors, administrators, or assigns, to grant the said lease or leases of the said piece or parcel of ground, and premises, or any part thereof, to the said C. D., his executors, administrators, or assigns, shall be utterly void and of no effect whatsoever; and the said C. D., his executors, administrators, or assigns, shall pay to the said A. B., his executors, administrators, or assigns, at the rate of £—— per foot per annum, on the frontage of the said piece or parcel of ground hereinbefore mentioned and described, as or in the nature of rent, from the date of this agreement, up to the time to which the same shall be so determined by such notice as aforesaid: AND FURTHER, THAT he the said C. D., his executors, administrators, or assigns, shall and will, at his and their own costs and charges, make or procure to be made a footway before all the said several houses so agreed to be built, and on the north side of the said piece or parcel of ground, of such and the same width as that in front of the said messuages or tenements on the south side of Y. square aforesaid, and pave the same footway with good Yorkshire paving, and a moor-stone or granite kirb, and shall and will pave, or cause to be paved, the same street or carriage-way in front of the said houses, to the rails of the said square, and the said street or carriage-way, on the north side of the said piece or parcel of ground, with Scotch granite or square Jersey pebble, so and in such manner, and to such extent, as to complete the foot and carriage-

part, if the houses be not completed at the time appointed.

As to the lessee's making a footway and road.

AGREEMENT FOR BUILDING UNDERLEASE.

way paving in front of the said houses, and north side of the said northernmost house, or macadamize the same, to the satisfaction of the said surveyor of the said E. F., his heirs or assigns, unless the same be done by the commissioners of the —— paving act; and also, that he the said C. D., his executors, administrators, or assigns, shall and will make, or cause to be made, the same foot and carriage-way paving, hereby agreed to be made, at such time or times as he or they shall be required so to do by the surveyor or agent, for the time being, of the said E. F., his heirs or assigns: PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that nothing in this agreement contained is meant or intended to be, or shall in any manner or for any purpose whatsoever be deemed, taken, or held to be or operate as a present demise or in the nature thereof, or to give or vest in the said C. D., his executors, administrators, or assigns, any term of years in the said piece or parcel of ground to be demised, when the messuages or tenements herein before agreed to be built shall be erected and built as aforesaid (*f*); and that, until such messuages or tenements shall be built and actually demised as aforesaid, the said piece or parcel of ground and premises shall be deemed to be held by the said C. D., his executors, administrators, or assigns, in the nature of a tenancy at will, determinable at two calendar months' notice in writing by the said A. B., his executors, administrators, or assigns, at any time after neglect or default shall be made in the building or completing of any of the said messuages or tenements so agreed to be built within the time hereinbefore limited for that purpose (*g*): AND THE SAID C. D. doth hereby

The agreement not to operate as a lease.

Covenant by the lessee to

(*f*) See supra, pp. 6, 9.

Tenancy at will.

(*g*) The effect of this stipulation, creating "a tenancy at will, determinable at two months' notice," is not very intelligible. A tenancy at will is properly determinable at the will of either party, upon notice, *i. e.* it is to be presumed *immediately* upon notice; and, therefore, it may be questionable whether a tenancy not determinable till after two months' notice can be a tenancy at will. The provisions of the agreement seem altogether inconsistent with the nature of a

AGREEMENT FOR BUILDING UNDERLEASE.

for himself, his heirs, executors, and administrators, further covenant with the said A. B., his executors and administrators, that he the said C. D., his executors, administrators, or assigns, will, at his own expense, erect and build a proper garden-wall, of the several heights and dimensions hereinbefore mentioned, to divide off the said piece or parcel of ground from the gardens at the backs of the houses, Nos. —— and ——, in Y. square aforesaid, belonging to the said A. B.; and also, two like garden-walls to inclose and divide the gardens of the said three last-mentioned houses, in such manner as the said A. B., his executors, administrators, or assigns, may direct or point out, and cover the same with cement coping. AND IT IS HEREBY further agreed and declared, by and between the said parties hereto, that the dressed flank-wall, with the balustrades thereon, and the iron-rails in front thereof, next X. place aforesaid, erected by the said A. B., shall remain and be the property of the said A. B.; and that the three sets of iron-rails and stone coping, erected by the said A. B. at the rear of the said intended three houses, shall be carefully removed and delivered up to the said A. B. as his property, and that the said C. D. shall pay to the said A. B., at the rate of —— shillings per thousand for the bricks as standing, of so much of the present fence wall next X. place and X. square as immediately adjoins and surrounds the said piece or parcel of ground, such fence-wall being retained by the said A. B. as his own property: AND LASTLY, it is further agreed between the said parties hereto, that in such lease or leases to be granted as hereinbefore mentioned, there shall also be contained a covenant on the part of the said A. B., his executors, administrators, and assigns, for the quiet possession of the

build certain garden walls.

Certain erections put up by the lessor to remain his property.

The leases to contain covenants.

—for quiet enjoyment and certain other

---

tenancy at will, which is absolutely determined, not only by notice, but by any act of ownership by the lessor, or by an assignment or waste by the lessee, or by the *death* or outlawry of either party. (2 Blackst. Comm. 145; 11 Ves. 391). It would, perhaps, be better to say that the tenancy should be a tenancy from year to year, determinable upon two months' notice, expiring at any time; and it is not improbable that even the existing stipulation would be held to import a tenancy of such a nature.

AGREEMENT FOR BUILDING UNDERLEASE.

covenants by the lessor.

premises so to be demised, against any person or persons claiming under him or them, he, the said C. D., his executors, administrators, or assigns, paying the rent and performing the covenants and agreements to be therein contained and on his and their part to be paid and performed, and all such other covenants, clauses, and agreements, on the part of the landlord, as are usually contained in leases of the like kind (*h*); and also a covenant on the part of the said A. B. for production, if required, of the original lease or leases from the said E. F. IN WITNESS &c.

(*h*) As to the risk incurred by this stipulation, see supra, p. 13, n. (*b*).

III.

TO A BUILDER.

UNDERLEASE *to a* BUILDER *of a* HOUSE *in* LONDON, *which had been built by him under an Agreement, the House being* COVERED IN *but* NOT FINISHED.

Parties.

Recital of agreement for a lease on completion of the buildings.

—of further agreement for a lease, from the superior landlord to the intended lessor.

THIS INDENTURE, made &c. BETWEEN L. M., of &c., [*lessor*], of the one part; and C. D., of &c., [*lessee*], of the other part; [*recital of agreements, whereby A. B. became entitled, on the completion of the building, to a lease from E. F., (see the recital, supra, p.* 11), *and of an agreement for a lease from A. B. to C. D.; (see the precedent of this agreement, supra, p.* 11)]: AND WHEREAS, by articles of agreement, made and entered into on the —— day of ——, between the said E. F. of the one part, and the said A. B. of the other part; the said E. F. agreed with the said A. B., his executors and administrators, that he, the said E. F., would, upon the performance of certain stipulations and agreements therein contained on the part of the said A. B., grant a lease or leases unto the said A. B., his executors, administrators, and assigns, of (amongst other hereditaments) the piece or parcel of ground and premises

TO A BUILDER.

hereinafter demised and leased, for the term of ninety-nine years from Midsummer day, ——, at the rent therein mentioned: AND WHEREAS the said A. B. duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby appointed X. Y., the said L. M., and Y. Z., executors thereof: AND WHEREAS the said A. B. died on the —— day of ——, without having revoked or altered the appointment of executors contained in his said will; and the same will, with a codicil thereto, were proved by the said L. M. alone, in the Prerogative Court of the Archbishop of Canterbury, on the —— day of ——: AND WHEREAS the said X. Y. and Y. Z. renounced probate of the said will and codicil, and, by an indenture bearing date the —— day of ——, renounced and disclaimed all the devises and bequests under the said will and codicil: AND WHEREAS, by an indenture bearing date the —— day of ——, and made or expressed to be made between the said E. F. of the one part, and the said L. M. of the other part, the said E. F. granted to the said L. M., as executor of the said A. B., a lease of the piece or parcel of ground and premises hereinafter demised, being part of the hereditaments and premises in the said articles of agreement of the —— day of ——, [*the articles between A. B. and C. D.*], particularly described: AND WHEREAS the said C. D. hath caused to be erected or built, and covered in, the messuages or tenements agreed to be erected and built by him, the said C. D., in and by the hereinbefore recited articles of agreement, of the —— day of ——, [*the articles between A. B. and C. D.*], conformably to the agreements on the part of the said C. D. therein contained, and the same hath been certified to the said L. M., as such executor as aforesaid, by the surveyor of the said E. F. and L. M.: AND WHEREAS, in pursuance of the said agreement of the —— day of ——, [*the articles between A. B. and C. D.*], it hath been agreed between the said L. M. and C. D. that the said rent of £—— shall be apportioned, and that the annual rent of £—— shall be paid in respect of the piece or parcel of ground and hereditaments hereinafter particularly mentioned, and intended to be hereby

—of the intended lessor's will.

—of his death, and the probate of his will.

—of the renunciation and disclaimer of two of the executors.

—of the original lease having been granted.

—of the intended underlessee having performed the stipulations as to building, &c.

—of the agreement for the apportionment of the rent among several houses erected on the land included in the agreement.

TO A BUILDER.

demised (*a*): NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said recited agreement of the —— day of ——, [*the articles between A. B. and C. D.*], and in consideration of the expense the said C. D. hath been at in erecting the messuage or tenement hereinafter demised, and of the rent hereby reserved, and the covenants and agreements hereinafter contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed and performed, he the said L. M. hath demised and leased, and by these precents doth demise and lease (*b*), unto the said C. D., his executors, administrators, and assigns, ALL THAT piece or parcel of ground, with the messuage or tenement, (being the third house southward from X. place), erected on part thereof, situate &c.; and the other descriptions whereof are contained in

Witnesseth.

Consideration.

Demise.

Parcels.

As to the apportionment of rent, and liabilities in building leases.

(*a*) If the rent were not apportioned, and separate leases taken for the separate houses, each house would remain liable to the whole rent, and the lessor would be at liberty to re-enter on the whole in case of a breach of covenant as to any part, (that is to say), each lessee would be liable to eviction on account of the acts of the other lessees, over whom he would have no control. (See ante, Vol. 3, p. 83, n. (*d*)). If, therefore, the lessor will consent, every agreement for a building lease of more than one house should contain a provision for granting a distinct lease of each house, at an apportioned part of the rent, and the demise should be made accordingly. The only objection to this course on the part of the lessee is the increased expense, which is unworthy of consideration in comparison with the increased facility of transfer acquired. There cannot be much doubt, too, that the lessor will get a higher rent on account of the increased value imparted to the leases, and will hardly lose any real security for his rent and covenants: for, in practice, the lessor of a considerable estate never proceeds against one tenant for the default or breach of another, on account of the injury which such an act would occasion to the general letting of the estate.

Operative words of leases.

(*b*) The ordinary operative words of leases are, "demise, lease, and to farm let" (Co. Lit. 45. b.); but any words amounting to a grant (Ib.) or any words by which one party agrees to give, and the other to take possession, (supra, p. 4, n. (*c*)), will create a lease. It is very usual to employ the words "demise and lease" alone, as in the present case; but sometimes "grant" is added, and occasionally "demise" is employed alone. The rational course would be to use "demise" alone, and only in the present tense; but the practice is not so.

a plan in the margin hereof, together with the porch, vaults, areas, rights, easements, and appurtenances thereto belonging (*c*), EXCEPT AND RESERVED out of this demise, the free passage and running of water and soil from other houses and buildings of the said E. F. and his tenants, by and through the channels and drains of the premises hereby demised, the tenant or tenants of such other houses and buildings, on request, paying his or their proportion of the charges of cleansing and repairing the same when need shall require: TO HAVE AND TO HOLD the said piece or parcel of ground, messuage or tenement, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, from the 25th day of December, ——, for the term of —— years (*d*): YIELDING AND PAYING,

TO A BUILDER.

Reservation of a right of passage for water and soil.

Habendum for a term.

Reddendum of a peppercorn

(*c*) See the mode of describing parcels in leases of this nature, *supra*, p. 12. A plan is always desirable. The general words commonly employed in leases, are usually much more brief than those in deeds affecting the freehold. In the present case they are unusually so, but several other forms will be found in the subsequent precedents: it may be proper to add, "or therewith usually held, used, or enjoyed." (See ante, Vol. 3, p. 200, n. (*n*); p. 213, n. (*h*); *Hinchcliffe* v. *Earl of Kinnoul*, 5 Bing. N. C. 1; and infra, Precedent XII., n. (*a*)).

Parcels.

General words in leases.

(*d*) It is better always to give the complete date, than to say "the —— day of —— *last*" or "*next*;" for if delay occur in the execution of the lease, or if there be a mistake in the date, the phrase may become inapplicable, and may alter the intended term, unless evidence can be given of the mistake. Thus, where a lease was dated the 25th day of March, 1783, habendum "from the 25th of March now last past," but it was shewn that the lease was not executed till after the 25th of March, 1783, it was held that the lease took effect from the delivery, and that the term was, therefore, to be computed from the 25th of March, 1783. (*Steele* v. *Mart*, 4 B. & C. 272; S. C., 6 Dowl. & Ry. 392). The words in the habendum, "from the day of the date," may mean either inclusive or exclusive of that day, as the context requires; thus, where such a lease was granted, under a power which required the leases to be in possession; "from" was held to mean inclusive of the day of the date. (*Pugh* v. *The Duke of Leeds*, Cowp. 714). An habendum "from the feast of St. Michael," must be taken to mean from New Michaelmas day, the 29th of September; extrinsic evidence is not admissible to shew that the habendum was intended to be from

As to the time from which leases are to be computed.

TO A BUILDER. therefore, for the first two years of the said term, the rent of a peppercorn; AND YIELDING AND PAYING (*e*) there-

for the first two years.

Further red-

Old Michaelmas day. (*Doe* d. *Spicer* v. *Lea*, 11 East, 312; see, too, *Smith* v. *Walton*, 8 Bing. 235; S. C. 1 Moo. & Scott, 380). But on a demise by agreement not under seal, or by parol, "Lady-day" may be explained, by extrinsic evidence, to mean Old Lady-day. (*Doe* d. *Hall* v. *Benson*, 4 B. & Ald. 588; *Denn* d. *Peters* v. *Hopkinson*, 3 Dow. & Ry. 507).

Mode of construing leases of uncertain duration.

A lease for a term if A. so long live, with remainder to B. for the residue of the term, must be construed to give B. a right to enjoy during all the residue of the years of the term. (*Wright* d. *Arm* v. *Cartwright*, 1 Burr. 288; 1 Ld. Keny. 529). In a recent case, "A. agreed to let, and B. agreed to take, a certain piece of land, *for the term of his natural life*," and B. agreed to lay out money on the premises. A. became bankrupt, and B. having laid out the money, A., and his assignees, by indenture, demised to "B., his executors, administrators, and assigns, all that &c., of which the said A. is tenant for life. Habendum to B., his executors, administrators, and assigns, for the term of *his* natural life." There were covenants by B., for himself, his executors, administrators, and assigns, at all times during the term to pay rent, and to repair, and to yield up "at the end of the said term, or other sooner determination of this lease by the death of the said A., or otherwise," and other covenants; and a covenant for quiet enjoyment by B., his executors, administrators, and assigns, during the natural life of the said A." The court held, that, notwithstanding the habendum referred to the life of B., yet, as the estate was limited to the executors and administrators of B. (which could only be valid for an estate pur auter vie), and referring to the language of the covenant for quiet enjoyment, and of the other covenants, the estate granted must be an estate for the life of A. (*Doe* d. *Pritchard* v. *Dodd*, 5 B. & Ad. 689; S. C. 2 Nev. & Man. 838; see further as to cases of uncertain duration, *Harris* v. *Evans*, 1 Wils. 262; Amb. 329; *Roe* d. *Bree* v. *Lees*, 2 Wm. Bl. 1171; *Mackay* v. *Mackreth*, 4 Doug. 213; S. C. 2 Chit. 461; *Doe* d. *Waters* v. *Houghton*, 1 Man. & Ry. 208; *Gwynne* v. *Maynestone*, 3 Car. & Pay. 302; *Evans* v. *Vaughan*, 4 B. & C. 261; S. C. 6 Dow. & Ry. 349.

Reddendum implies a covenant for payment of the rent.

(*e*) The reddendum of a lease creates an implied covenant for the payment of the rent; (*Giles* v. *Hooper*, Carth. 135; 9 Ves. 330); but an express covenant for that purpose, which does away with the implication, is always inserted in formal leases. The covenant implied on the reservation does not arise till entry. (1 Burr. 125). Of course it will be understood that no formal reservation of rent is necessary; any words indicating the intention of the parties, that a stated rent shall be paid, operate as a reservation of it, so as to give the owner of the reversion a right of action on the implied covenant.

fore, yearly and every year during the remainder of the said term, unto the said L. M., his executors, administrators, and assigns (*f*), the clear yearly rent of £——, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, free from the sewers rate and all other taxes, rates, assessments, payments, and outgoings whatsoever: AND THE SAID C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said L. M., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, shall and will, from time to time during the said term hereby granted, pay or cause to be paid unto the said L. M., his executors, administrators, and assigns, the said yearly rent hereby reserved, at the times and in the manner hereinbefore mentioned for payment thereof, free and clear of and from the sewers rate, and all other taxes, rates, assessments, payments, and outgoings whatsoever; and also shall and will, during the said term hereby granted, bear, pay, and discharge the sewers rate, and all other taxes, rates, payments, assessments, and outgoings whatsoever, which now are, or at any time or times during the said term shall be taxed, rated, charged, or assessed on the said premises hereby demised, or any part thereof, or upon the landlord or tenant in respect thereof, or of the rent hereby reserved, including any future land tax, (the present land tax having

dendum for the remainder of the term.

Covenants by lessee for payment of rent.

—and rates and taxes.

(*Drake* v. *Munday*, Cro. Car. 207; S. C., 2 W. Jones, 231). See several of the cases cited supra, p. 4, n. (*c*), in which informal instruments were held to be leases.

(*f*) The reservation in this case is correct, although the lease is made by an executor. For if an executor, being possessed of a term, grant an underlease reserving rent, and die, his executor [administrator?] shall have the rent, (as assets), and not the administrator, de bonis non, of the original testator. (*Norton* v. *Harvy*, 2 Lev. 100; S. C. 1 Vent. 295; *Drue* v. *Baily*, 2 Lev. 100; S. C., 1 Vent. 275). So, too, the administrator of an executor shall have the rent. (*Drew* v. *Drewry*, 1 Vern. 94). The reservation, however, may be general, and would have the same result. See the cases above, and the note infra, on the reservation of rent.

Reservation of rent on leases by execution.

TO A BUILDER. —and a due share of ex-

been redeemed) (*g*): AND ALSO SHALL and will, during the said term, when need shall require, bear, pay, and allow

Covenant to pay taxes,—whether it extends to future as well as present taxes.

(*g*) The covenant to pay taxes, and the corresponding clause in the reddendum, and covenant for payment of rent, that the rent is to be paid tax free, should expressly extend to taxes subsequently imposed, as well as to those already existing. For the law on the point is not well settled, although it seems probable that a general covenant for the payment of taxes will include future as well as existing taxes. (*Brewster* v. *Kidgill*, 12 Mod. 167; S. C., nom. *Brewster* v. *Kitchen*, 1 Ld. Raym. 317; *Giles* v. *Hooper*, Carthew, 135; *Davenant* v. *Bishop of Salisbury*, 1 Vent. 233; S. C., 3 Keb. 69; 2 Lev. 68). Under a covenant, by a tenant, to pay a fixed yearly rent, "all taxes thereon being to him allowed," and to pay "all such further or additional rates and taxes as shall or may be assessed or imposed on the said hereby demised premises, or on any additional buildings or improvements" erected by the tenant; and a covenant by the landlord to pay all rates, taxes, and assessments "which shall or may be rated, &c.," in respect of the fixed yearly rent, but with an exception of further or additional taxes, it was held that the tenant was bound to defray all increase of the old, as well as any new rates, beyond the sums at which the premises were rated in respect of the fixed yearly rent at the time of the lease. (*Graham* v. *Wade*, 16 East, 29). So where the lessor covenanted to pay all taxes then chargeable, and the lessee covenanted to pay all fresh taxes which should thereafter be charged, it was decided that the lessor should pay all taxes actually chargeable at the date of the lease, and that the lessee should pay all fresh taxes, and all such additions to the old taxes as were occasioned by the improved value of the premises. (*Watson* v. *Atkins*, 3 B. & Ald. 647). And even when the lessor covenanted to pay all taxes "already charged, or to be charged, upon or in respect of the demised premises," there being a covenant, by the lessee, not to build without license; and the lessee, at the time of the lease, receiving such a license, and afterwards building, so as to increase the annual value of the premises, it was held that the lessor was liable to pay only the taxes upon the original value, those on the improved value being paid by the lessee. (*Watson* v. *Home*, 3 B. & C. 285; S. C., 1 Man. & Ry. 191). And as the tenant had compounded for the taxes, and, under such composition, the taxes were assessed at a less annual sum than the improved value, it was held that the lessor was to pay that proportion of the assessment which the reserved rent bore to the improved annual value. (Id.) So, if by the terms of the lease the lessor is to pay the land tax, and that tax is increased by the improvement in value of the premises, the lessor is only subject to the land tax payable in respect of the rent reserved. (*Yea* v. *Leman*, 1 Wils.

the share payable, or which shall become payable, in respect of the said premises, of supporting, repairing, cleansing,

TO A BUILDER.

penses connected with

21 ; *Hyde* v. *Hill*, 3 T. R. 377 ; *Whitfield* v. *Brandwood*, 2 Stark. 440). And where a lessor, in consideration of a premium and covenant to repair, demised a house at less than the annual value, and then redeemed the land tax, it was held that he was entitled to receive from the tenant an annual payment, bearing the same proportion to the whole land tax redeemed, as the difference between the rent and the annual value bore to the annual value. (*Ward* v. *Const*, 10 B. & C. 635 ; S. C. 5 Man. & Ry. 402). An agreement for a net annual rent, means a rent free of all rates and taxes, including sewers rates and land tax ; (*Bennett* v. *Womack*, 7 B. & C. 627 ; S. C. 1 Man. & Ry. 624 ; 3 Car. & Pay. 96) ; but this, it should be observed, was a case between the vendor and purchaser of a lease, and not between landlord and tenant. If the covenant be for the payment of taxes simply, it is not clear whether the covenantor will be bound to pay parochial, or church, or sewers rates, or any other than parliamentary or government taxes. (*Count of Arran* v. *Crisp*, 12 Mod. 55 ; *Brewster* v. *Kidgill*, 12 Mod. 167 ; S. C. nom. *Brewster* v. *Kitchin*, 1 Ld. Raym. 317). The word "rates" will doubtless extend to parochial and church rates ; and the words, "public taxes, charges, and assessments whatsoever," extend to the poor rate. (*The King* v. *Scott*, 3 T. R. 602). In practice, words of eextnsive import should be used, to preclude all disputes of this nature. Such a phrase as "all taxes, rates, charges, assessments, impositions, and outgoings whatsoever," will probably include every kind of payment, so as to insure the landlord's receiving a net rent.

—what taxes and payments it includes ;

Some doubt has existed, whether a covenant by the tenant to pay taxes generally, rendered him liable to pay land tax and sewers rate. The land tax has been commonly considered a landlord's tax ; (*Rex* v. *Mitcham*, 1 Doug. 226 ; *Stubbs* v. *Parsons*, 3 B. & Ald. 516 ; *Andrew* v. *Hancock*, 1 Brod. & Bing. 37 ; S. C. 3 J. B. Moore, 278 ; *Spragg* v. *Hammond*, 2 Brod. & Bing. 59 ; S. C. 4 J. B. Moore, 431) ; but it appears on a reference to the land tax acts, that the tax is payable by the person "having or holding" lands, which includes both landlords and tenants, the landlord certainly being liable for the proportion payable on the rent reserved, and the tenant for the remainder. (See *Ward* v. *Const*, 10 B. & C. 635 ; S. C. 5 Man. & Ry. 402 ; and the other cases previously cited on this point). And it is now well settled that a covenant by the tenant to pay taxes generally, includes the obligation to pay the land tax. (*Hopwood* v. *Barefoot*, 11 Mod. 238 ; *Amfield* v. *White*, Ry. & Moo. 246 ; *Bradbury* v. *Wright*, 2 Doug. 624). Under the statute of sewers, it is said that the rate is sometimes imposed on the landlord, sometimes on the tenant, and sometimes on both ; but it would appear that an agreement for a net

—and particularly as to land tax and sewers rate.

TO A BUILDER.

party-walls, sewers, &c.

amending, and rebuilding all party walls, gutters, sewers, drains, and cesspools belonging to the said premises: AND ALSO THAT the said C. D., his executors, administrators, or assigns, shall and will, at his or their own costs, within two years from the date hereof, complete and finish the said messuage or tenement hereby demised, in a good, substantial, and workmanlike manner: AND ALSO SHALL and will, at all times during the said term, keep the said premises insured against loss or damage by fire, in the —— fire office, or such other of the public offices for insurance, in London or Westminster, as the said L. M., his executors, administrators, or assigns, or the said E. F., his heirs or assigns, shall from time to time appoint, and, when thereunto required, produce the current year's receipt for such insurance to the said L. M., his executors, admin-

—to complete the house;

—and to keep the premises insured;

---

annual rent, or for a rent free of all rates and taxes, means a rent free of sewers rate as well as of land tax. (*Bennett* v. *Womack*, 7 B. & C. 627; S. C. 1 Man. & Ry. 624; 3 Car. & Pay. 96). But it is not unusual to avoid questions of this nature by specifying the sewers rate, and even the land tax, in the covenant for payment. The tenant must deduct such sums as he is authorized to deduct, in respect of land tax, from each current payment of rent; and if he has paid the rent without such deduction, he cannot recover for payments on account of land tax, or set off such payments against subsequent claims for rent. (*Stubbs* v. *Parsons*, 3 B. & Ald. 516; *Andrew* v. *Hancock*, 1 Brod. & Bing. 37; 3 J. B. Moore, 278; *Spragg* v. *Hammond*, 2 Brod. & Bing. 59; 4 J. B. Moore, 431; *Wildey* v. *The Coopers' Company*, 3 P. Wms. 127.

Payment of drainage taxes.

In a case under a drainage act, which directed that the taxes to be charged for drainage should be paid by the tenants of the land charged with the same, who might deduct and retain the same out of the rents payable to their respective landlords; and a tenant quitted, leaving unpaid a drainage tax, which had become due, but having paid all rent to his landlord, and the collector levied the tax upon some property left by the outgoing tenant on the land, so that he was obliged to pay the tax, it was held that the tenant liable was the tenant at the time of the tax accruing due, and not the tenant for the time being; and that consequently the outgoing tenant, who had paid the tax, might maintain assumpsit against the landlord for money paid to his use. (*Dawson* v. *Linton*, 5 B. & Ald. 521; S. C. 1 Dow. & Ry. 117; see, too, *Barraud* v. *Archer*, 2 Sim. 433; S. C., affirmed on appeal, 2 Russ. & My. 751).

TO A BUILDER.

istrators, and assigns, or to the said E. F., his heirs or assigns, or his or their steward or agent for the time being. AND ALSO SHALL and will, at the like costs, at all times during the said term, when need shall require, well and sufficiently repair, support, amend, pave, paint, cleanse, and keep the said premises, with the appurtenances, with all manner of needful and necessary reparations, painting, glazing, cleansing, and amendments whatsoever: AND THE SAID premises, with the appurtenances, so being well and sufficiently repaired, supported, amended, paved, painted, glazed, and kept, together with all the doors, wainscots, dressers, drawers, locks, keys, bolts, bars, staples, hinges, hearths, chimney-pieces, mantel-pieces, chimney-jambs, footpaces, slabs, covings, windows, sashes, shutters, partitions, sinks, pumps, pipes, cisterns, waterclosets, rails, and other things, which now are, or at any time during the said term shall be, fixed or fastened to the freehold of the said premises, or belong thereto, shall and will, at the expiration or other sooner determination of the said term, (which shall first happen), peaceably yield up unto the said L. M., his executors, administrators, or assigns: AND ALSO THAT it shall be lawful for the said L. M., his executors, administrators, and assigns, and for the said E. F., his heirs and assigns, and for the stewards, surveyors, workmen, and others employed by them, or any of them, twice in every year, or oftener during the said term, in the daytime, to enter into the said premises, or any part thereof, to search and see the decays, defects, and want of reparation and amendment, in and about the same, and of the decays, defects, and wants of reparation and amendment there found, to give or leave notice, in writing, on or at the said premises for the amendment thereof: AND THE SAID C. D., his executors, administrators, or assigns, shall and will, within three calendar months next after every such notice, well and sufficiently repair and make good all such decays, defects, and wants of reparation and amendment, whereof notice shall have been so given or left: AND ALSO THAT no erection or building whatsoever shall, at any time during the said term, be erected in, on, or over the garden or yard, or areas of the said messuage or tenement, hereby

—and to repair and maintain;

—and yield up at the end of the term;

—that the immediate and original lessors may enter and inspect;

—and that, on notice, lessee will repair within a given time;

—that no building shall be erected in the garden or areas;

TO A BUILDER.

demised, or any part thereof respectively, without the consent in writing of the said E. F., his heirs or assigns, or his or their steward or agent for the time being: AND THAT the said garden or yard shall not, at any time during the said term, be used in any other manner than as a garden or yard, without such consent as aforesaid: AND THAT no alteration or addition shall, at any time or times during the said term, be made in or to the height, sides, front, back, roofs, walls, timbers, or elevation of the said messuage or tenement, and premises hereby demised, or the yard or garden walls thereof, or the area, or area rails thereof, without such consent as aforesaid: AND ALSO, THAT the said messuage or tenement hereby demised shall not, at any time during the said term, be converted into, or let or occupied as chambers, nor used or occupied as a boarding or lodging house, and that no school or seminary, or any art, trade, or business whatsoever (*h*), shall, at any

—and that the garden shall not be used for other purposes;

—that lessee shall not make alterations without consent;

—that the house shall be used only as a dwelling-house;

Covenants against carrying on trades or businesses;

(*h*) A covenant not to carry on a trade does not, perhaps, restrain the lessee from carrying on a business for profit, if the profit does not arise from buying and selling. Thus, where there was a covenant not to exercise certain specified "trades or businesses," or "any offensive trade," it was held that the lessee might keep a lunatic asylum, (which was not one of the specified businesses), for even if it were an offensive business, it was not a trade. (*Doe* d. *Wetherell* v. *Bird*, 2 Ad. & Ell. 161; S. C. 4 Nev. & Man. 285). But the decision was grounded chiefly on the language of the covenant, which mentioned "trades or businesses" in the first place, and "trade" only in the second. Where, however, a lessee covenanted "not to use or exercise, or permit or suffer to be used or exercised, any trade or business whatsoever," and assigned the lease to a person who kept a school on the premises; it was held that this was a breach of the covenant, the court being of opinion that keeping a school was clearly a business within the meaning of the covenant. (*Doe* d. *Bish* v. *Keeling*, 1 Mau. & Sel. 95). The language of the covenant in the text would, it is apprehended, admit of no doubt as to the intention.

—or specified trades and businesses;

The covenant is sometimes framed so as to restrain the exercise only of certain trades or businesses, and some cases are reported as to what is a particular trade within the meaning of the covenant. Thus, a covenant not to exercise the trade of a butcher, is broken by the tenant (who kept a chandler's shop) selling raw meat by retail, although no animals were killed on the premises, and the meat was in the interior of the shop, and not exposed in the window. (*Doe* d.

time or times during the said term, be used, exercised, or carried on, in or upon the premises hereby demised, or

TO A BUILDER.

Gaskell v. *Spry*, 1 B. & Ald. 617). But a covenant (in a lease granted in 1830) not to carry on the trade or business of "a retailer of beer, ale, or spirituous liquors," was not broken by carrying on the business, of a retail brewer; for the court, referring to the statute 5 Geo. 4, c. 54, s. 6, said that a retail brewer did not *ex vi termini* mean a retailer of beer. (*Simons* v. *Farren*, 1 Bing. N. C. 126; S. C. 4 Moo. & Scott, 672).

—or offensive trades or businesses,

The covenant is not unfrequently framed so as to prohibit only offensive trades or businesses, (see infra, Precedent VI.), or to prohibit occupations which may be a nuisance or annoyance to the neighbours or other tenants of the lessors. (See the next covenant in the text). A public-house, it seems, is not necessarily an annoyance. For where a lessee covenanted not to do any act, matter, or thing in the premises which might be, grow, or lead to the damage, annoyance, or disturbance of the lessor, or any of his tenants, or to any part of the neighbourhood; and the lease contained a proviso for re-entry, if any occupier of the premises should carry on certain specified trades or businesses, (that of a licensed victualler not being one of them), or any other business that might be, or grow, or lead to be offensive, or any annoyance, or disturbance of the lessor's tenants, it was held that the opening of a public-house on the premises was not a breach of the covenant or proviso. (*Jones* v. *Thorne*, 1 B. & C. 715; S. C. 3 Dow. & Ry. 152). Keeping a school is offensive; (*Doe* d. *Bish* v. *Keeling*, ubi supra); and so, probably is keeping a lunatic asylum. (*Doe* d. *Wetherell* v. *Bird*, ubi supra). But it is to be observed that the construction of a covenant of this nature depends much on the situation of the premises, and on the trade (if any) carried on upon them at the time of the demise. (*Gutteridge* v. *Munyard*, 7 Car. & Pay. 129; S.C. 1 Moo. & Rob. 334). And it seems that a trade actually carried on on the premises at the time of the demise could not be taken to be prohibited by the covenant. (Id.) If the prohibition be to use the premises for a trade, it clearly is not necessary, to constitute a breach of the covenant, that the act done should be a public or private nuisance in law. (*Macher* v. *The Foundling Hospital*, 1 Ves. & Bea. 190). See further with respect to nuisances, infra, Precedent VI., n. (*b*).

Covenants not to carry on trades or businesses without the license of the lessor.

The covenant is frequently so framed as not to prohibit trades, or certain trades, absolutely, but only to prohibit them without the license of the lessor. If the license be required to be in writing, it seems clear that a verbal or implied license to carry on a particular trade will not sanction the carrying on of any other trade, whether more or less offensive than that licensed. (*Macher* v. *The Foundling Hospital*, ubi supra). But it is doubtful, whether, by a license in writing to carry on a particular trade, the condition would not, in

TO A BUILDER.

any part thereof, but that the same shall, during the whole of the said term hereby granted, be used and occupied as and for a private dwelling-house only: AND ALSO, THAT no act, matter, or thing whatsoever, shall, at any time during the said term, be done in or upon the said premises, or any part thereof, which shall or may be, or grow to the annoyance, nuisance, grievance, damage, or disturbance of the said E. F., his heirs or assigns, or any of his or their tenants, or whereby any window or light belonging to any messuage or tenement, or building, being the estate of the said E. F., his heirs or assigns, shall or may be in any manner stopped or obstructed: AND ALSO, THAT if he the said C. D., his executors, administrators, and assigns, shall not, from time to time during the said term, whenever thereunto required by the said E. F., his heirs or assigns, or his or their steward or agent for the time being, by notice in writing, to be left on or at the said premises hereby demised, (such notice not being given oftener than once in every three years), during the said term, paint or colour all the outside stucco of the said premises, in imitation of Bath stone, and paint all the outside wood and iron work thereof, within one month after every such notice, in such manner as to preserve an uniformity of appearance with the other houses built and to be built on the east side of X. square aforesaid, then that the said L. M., his executors, administrators, or assigns, shall be at liberty to cause the same to be done, and be entitled to recover the expense thereof from the said C. D., his executors, administrators, or assigns; and in default of payment thereof by the said C. D., his executors, administrators, or assigns, or the occupier of the premises for the time being, to the said L. M., his executors, administrators, or assigns, or the said

—and that no nuisance shall be committed;

—or light obstructed;

—and that if lessee do not, on notice, paint the outside of the house so as to preserve uniformity of appearance with those adjoining, lessor may do so;

—and recover the expense from the tenant by distraint.

analogy to the decision in *Dumpor's case*, be gone. (Id.) It is probable that a license would be implied or presumed, if the lessee were, for the purpose of carrying on a prohibited trade, to lay out money on the premises, with the knowledge of the lessor. (Id.; see, too, *Doe* d. *Shephard* v. *Allen*, 3 Taunt. 78). But without some such implied assent, or some positive act by the lessor, as the subsequent receipt of rent, the mere lapse of time is not a waiver, by the lessor, of the forfeiture. (*Doe* d. *Shephard* v. *Allen*, ubi supra).

E. F., his heirs or assigns, within one month after payment thereof shall be demanded by the said L. M., his executors, administrators, or assigns, or by the said E. F., his heirs or assigns, or their, or either of their, stewards or agents, for the time being, at or on the said premises, to distrain for the same on the said premises, in the same manner in every respect as if the same were rent in arrear, and had been reserved in addition to the rent hereby reserved: PROVIDED ALWAYS, and it is hereby agreed, that if the yearly rent hereby reserved, or any part thereof, shall be unpaid for twenty-one days next after any of the days of payment whereon the same ought to be paid as aforesaid, or on breach, neglect, non-performance, or non-observance of any of the covenants or agreements hereinbefore contained, then and from thenceforth, and in either of such cases, it shall be lawful for the said L. M., his executors, administrators, and assigns, into the said hereby demised premises, or any part thereof in the name of the whole, to re-enter, and the same to re-possess and enjoy, as if this lease had never been made: AND THE SAID L. M., for himself, his executors, administrators, and assigns, (so as, and to the intent, as far as may be, to bind all and every persons and person who shall, for the time being, be possessed of or entitled to the reversion of the premises expressed to be hereby demised, while he or they shall be so possessed or entitled, but so as not to render himself, or his executors or administrators, answerable out of his own personal estate, further or otherwise than for or in respect of any breach or breaches of covenant which may happen while he or they shall be so possessed), doth hereby covenant with the said C. D., his executors, administrators, and assigns, in the manner following, (that is to say), that he and they, paying the rent hereby reserved, and performing and observing all and every the covenants and agreements hereinbefore contained, shall and may peaceably hold and enjoy the said premises hereby demised, during the said term hereby granted (*i*), without the lawful let, suit, trouble, eviction,

TO A BUILDER.

Proviso for re-entry.

Qualified covenants by the lessor for quiet enjoyment.

(*i*) In a covenant for quiet enjoyment, during the "term," the term which the lessor purported to grant must be that intended, and

Meaning of "term" in the

TO A BUILDER.

any part thereof, but that the same shall, during the whole of the said term hereby granted, be used and occupied as and for a private dwelling-house only: AND ALSO, THAT no act, matter, or thing whatsoever, shall, at any time during the said term, be done in or upon the said premises, or any part thereof, which shall or may be, or grow to the annoyance, nuisance, grievance, damage, or disturbance of the said E. F., his heirs or assigns, or any of his or their tenants, or whereby any window or light belonging to any messuage or tenement, or building, being the estate of the said E. F., his heirs or assigns, shall or may be in any manner stopped or obstructed: AND ALSO, THAT if he the said C. D., his executors, administrators, and assigns, shall not, from time to time during the said term, whenever thereunto required by the said E. F., his heirs or assigns, or his or their steward or agent for the time being, by notice in writing, to be left on or at the said premises hereby demised, (such notice not being given oftener than once in every three years), during the said term, paint or colour all the outside stucco of the said premises, in imitation of Bath stone, and paint all the outside wood and iron work thereof, within one month after every such notice, in such manner as to preserve an uniformity of appearance with the other houses built and to be built on the east side of X. square aforesaid, then that the said L. M., his executors, administrators, or assigns, shall be at liberty to cause the same to be done, and be entitled to recover the expense thereof from the said C. D., his executors, administrators, or assigns; and in default of payment thereof by the said C. D., his executors, administrators, or assigns, or the occupier of the premises for the time being, to the said L. M., his executors, administrators, or assigns, or the said

—and that no nuisance shall be committed;

—or light obstructed;

—and that if lessee do not, on notice, paint the outside of the house so as to preserve uniformity of appearance with those adjoining, lessor may do so;

—and recover the expense from the tenant by distraint.

analogy to the decision in *Dumpor's case*, be gone. (Id,) It is probable that a license would be implied or presumed, if the lessee were, for the purpose of carrying on a prohibited trade, to lay out money on the premises, with the knowledge of the lessor. (Id.; see, too, *Doe* d. *Shephard* v. *Allen*, 3 Taunt. 78). But without some such implied assent, or some positive act by the lessor, as the subsequent receipt of rent, the mere lapse of time is not a waiver, by the lessor, of the forfeiture, (*Doe* d. *Shephard* v. *Allen*, ubi supra).

E. F., his heirs or assigns, within one month after payment thereof shall be demanded by the said L. M., his executors, administrators, or assigns, or by the said E. F., his heirs or assigns, or their, or either of their, stewards or agents, for the time being, at or on the said premises, to distrain for the same on the said premises, in the same manner in every respect as if the same were rent in arrear, and had been reserved in addition to the rent hereby reserved: PROVIDED ALWAYS, and it is hereby agreed, that if the yearly rent hereby reserved, or any part thereof, shall be unpaid for twenty-one days next after any of the days of payment whereon the same ought to be paid as aforesaid, or on breach, neglect, non-performance, or non-observance of any of the covenants or agreements hereinbefore contained, then and from thenceforth, and in either of such cases, it shall be lawful for the said L. M., his executors, administrators, and assigns, into the said hereby demised premises, or any part thereof in the name of the whole, to re-enter, and the same to re-possess and enjoy, as if this lease had never been made: AND THE SAID L. M., for himself, his executors, administrators, and assigns, (so as, and to the intent, as far as may be, to bind all and every persons and person who shall, for the time being, be possessed of or entitled to the reversion of the premises expressed to be hereby demised, while he or they shall be so possessed or entitled, but so as not to render himself, or his executors or administrators, answerable out of his own personal estate, further or otherwise than for or in respect of any breach or breaches of covenant which may happen while he or they shall be so possessed), doth hereby covenant with the said C. D., his executors, administrators, and assigns, in the manner following, (that is to say), that he and they, paying the rent hereby reserved, and performing and observing all and every the covenants and agreements hereinbefore contained, shall and may peaceably hold and enjoy the said premises hereby demised, during the said term hereby granted (*i*), without the lawful let, suit, trouble, eviction,

TO A BUILDER.

Proviso for re-entry.

Qualified covenants by the lessor for quiet enjoyment.

(*i*) In a covenant for quiet enjoyment, during the "term," the term which the lessor purported to grant must be that intended, and

Meaning of "term" in the

TO A BUILDER.

or interruption of the said L. M., his executors, administrators, or assigns, or of any person or persons lawfully claiming or to claim by, from, or under him, them, or any of them (*k*) : AND THAT he the said L. M., his executors,

—and for the

---

covenant for quiet enjoyment.

not the term actually granted, if it happen that he had no power to grant the term purported to be granted. (*Evans* v. *Vaughan*, 4 B. & C. 261 ; S. C. 6 Dow. & Ry. 349).

Implied covenant for quiet enjoyment, from the words of demise;

(*k*) The words "grant and demise," in a lease for years, create a covenant for quiet enjoyment. (4 Rep. 80 b ; 5 Rep. 17 a ; Com. Dig. tit. *Covenant*, A. 4 ; 9 Ves. 330 ; *Schlenker* v. *Moxsy*, 3 B. & C. 789 ; S. C. 7 Dow. & Ry. 747) ; and so, likewise, does the word "grant" in an assignment. (*Baber* v. *Harris*, 1 Per. & Dav. 360). The word "demise," too, implies a covenant for title. (*Line* v. *Stephenson*, 5 Bing. N. C. 183 ; *Fraser* v. *Skey*, 2 Chit. 646). But the operation of these implied covenants is superseded by an express covenant for quiet enjoyment. (*Nokes' case*, 4 Rep. 80 b ; 1 Mod. 113 ; 1 Ves. Sen. 101 ; 2 Ves. Jun. 544 ; *Merrill* v. *Frame*, 4 Taunt. 329 ; *Woodhouse* v. *Jenkins*, 9 Bing. 431 ; S. C. 2 Moo. & Scott, 599 ; *Line* v. *Stephenson*, ubi supra). The covenant for quiet enjoyment should never be omitted, because the implied covenant extends to the acts of all persons, while the express covenant is restricted to the acts of the lessor himself, and of the persons claiming under him. The implied covenant determines with the estate and interest of the lessor ; thus, where a tenant for life demised for a term, without any express covenant for quiet enjoyment, and the lessee, after the death of the tenant for life, was evicted by the remainderman before the expiration of the term, it was held that the lessee could not maintain an action of covenant against the executor of the tenant for life. (*Adams* v. *Gibney*, 6 Bing. 656 ; S. C. 4 Moo. & Pay. 491).

—superseded by the express covenant.

Difference of extent of implied and express covenants.

Both the implied covenants arising from the words "grant and demise," and express general covenants, are confined to lawful, and do not extend to wrongful, evictions, (*Dudley* v. *Folliott*, 3 T. R. 584 ; and the cases cited Id. 587, n. (*a*) ; *Foster* v. *Pierson*, 4 T. R. 617), except the lessor be himself the disturber. (*Corus* v. ——, Cro. Eliz. 544). But when the covenant is special against the acts of particular persons, it extends to all their acts, whether lawful or wrongful. (*Nash* v. *Palmer*, 5 Mau. & Sel. 374 ; *Fowle* v. *Welsh*, 1 B. & C. 29).

Construction of express covenants for quiet enjoyment;

Questions often arise as to whether persons who have evicted the lessee are persons claiming according to the covenant. As, where a fine was levied of a feme covert's estate, with a power to the husband and wife to declare the uses, which they exercising, appointed the estate in remainder to A., and the husband made a lease, and covenanted for quiet enjoyment against any person claiming under him, and A.

administrators, and assigns, shall and will, from time to time and at all times during the continuance of the said term hereby granted, upon every reasonable request, and notice thereof, in writing, for that purpose given to him or them by the said C. D., his executors, administrators, or assigns, or any other person or persons lawfully or equitably claiming or to claim any estate, right, title, or interest, of, in, or to the said piece or parcel of ground, messuage, and other hereditaments hereby demised or expressed and intended so to be, or any part or parts thereof, at the costs or charges of the person or persons requiring the same, produce and shew forth, or cause or procure to be produced and shewn forth, to him, them, or any of them, or to such person or persons as he, they, or any of them, shall desire or require at any trial or hearing in any Court of law or equity, or other judicature, or in the execution of any

production of the documents of title mentioned in a schedule;

---

evicted the tenant, it was held that an action would lie against the husband's executors, upon the covenant for quiet enjoyment. (*Hurd* v. *Fletcher*, 1 Doug. 43). So, where a tenant for life, making a lease under but not conformable to a power, covenanted for quiet enjoyment, without interruption by the lessor, his heirs or assigns, or any other person claiming any estate, right, or interest, by, from, or under him, or any of his ancestors; and the remainderman in tail, the eldest son of the lessor, evicted the tenant, it was held that the eldest son was a person claiming under the lessor, within the meaning of the covenant for quiet enjoyment. (*Evans* v. *Vaughan*, 4 B. & C. 261; S. C. 6 Dow. & Ry. 349; see, however, *Woodhouse* v. *Jenkins*, 9 Bing. 431; S. C. 2 Moo. & Scott, 599).

—in underleases.

With regard to how far covenants for quiet enjoyment in underleases extend to the acts of the superior landlord, see *Lewis* v. *Campbell*, 3 J. B. Moore, 35; S. C. in error, nom. *Campbell* v. *Lewis*, 3 B. & Ald. 392; *Upton* v. *Fergusson*, 3 Moo. & Scott, 88; *Evans* v. *Curtis*, 2 Car. & Pay. 296; *Hancock* v. *Caffyn*, 8 Bing. 358; S. C. 1 Moo. & Scott, 521; *Spencer* v. *Marriott*, 1 B. & C. 457; S. C. 2 Dow. & Ry. 665; *Ireland* v. *Bircham*, 2 Bing. N. C. 90; S. C. 2 Scott, 207.

Payment of rent not a condition precedent to the performance of the covenant for quiet enjoyment.

It seems that, under an ordinary covenant for quiet enjoyment, the payment of rent is not a condition precedent to the performance of the covenant; but if the rent be not paid, the lessor must proceed by ejectment under his proviso for re-entry. (*Dawson* v. *Dyer*, 5 B. & Ad. 584; S. C. 2 Nev. & Man. 559). See further with respect to the protection afforded by the covenant for quiet enjoyment, infra, Precedent VIII., n. (*e*).

TO A BUILDER.

commission or elsewhere, as occasion shall be or require, all or any of the several deeds and instruments which are specified in the schedule annexed to these presents, for the manifestation, defence, and support of the estate, title, and possession of the said C. D., his executors, administrators, or assigns, and all and every other person or persons so claiming or to claim as aforesaid: AND SHALL and will, from time to time and at all times hereafter during the said term, at the request, costs, and charges of the said C. D., his executors, administrators, or assigns, or any other person or persons so claiming or to claim as aforesaid, make and deliver, or cause to be made and delivered, to the said C. D., his executors, administrators, or assigns, or such other person or persons as aforesaid, such true and attested copies, or true copies unattested, of the same respectively, or any of them, as he or they may require: AND SHALL and will, in the meantime, keep the same deeds and instruments in his and their custody uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident (*l*). IN WITNESS &c.

—and to furnish copies of them;

—and safely keep the same.

THE SCHEDULE referred to in the above-written indenture.

(*l*) This is, of course, not a very usual covenant in leases, though necessary in cases like that in the text,

IV.

LEASE *of a* FARM (*described in a* SCHEDULE) *for a* TERM *of* YEARS, DETERMINABLE *on the* DEATH *of the* LESSOR. EXCEPTION AND RESERVATION *of Clay, Fish, Trees, and Bushes, and of* RIGHTS *of* ENTRY *for* SPORTING, *and other special and general purposes.* RESERVATION (*over the usual Rent*) *of an* ADDITIONAL RENT *for ploughing* PASTURE, *or misusing* ARABLE *Land. Covenants by the* LESSEE (*among others*) *to do Carriage-Work, and furnish Straw for the* LESSOR,—*to warn off Sportsmen Trespassing,—to manage the Farm in a specified manner,—not to Assign or Underlet without License,—that Lessor may resume Land for Planting,—to keep down Rabbits,—to use an Ancient Fair.* PROVISO *for* RE-ENTRY. COVENANTS *by the* LESSOR *to do certain Acts, and for quiet Enjoyment, till a fixed day after the end of the Term.* PROVISION *for* VALUATION *of* CROPS *left at the end of the Term.* OF A FARM.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., [*lessor*], of the one part; and C. D., of &c., [*lessee*], of the other part: WITNESSETH, that, in consideration of the yearly rent hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed and performed, he the said A. B. hath demised, leased, and to farm letten, and by these presents doth demise, lease, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL THAT messuage or farmhouse, together with the cottages, barns, stables, outhouses, buildings, yards, gardens, and orchards, homestall, closes, and inclosures, pieces or parcels

Parties. Witnesseth. Consideration. Demise. Parcels.

OF A FARM.

of arable, meadow, and pasture land, therewith used, held, and occupied, situate in ——, in the said county of ——, containing, by admeasurement, —— more or less, late in the tenure or occupation of ——, and now of the said C. D., and more particularly described in the schedule hereunder written: AND ALSO ALL the rights, liberties, privileges, and appurtenances to the said messuage, farm, and premises belonging, or in anywise appertaining, or therewith held, used, or enjoyed, EXCEPT AND RESERVED (*a*) out of this

General words.

Exception and reservation of

Distinction between an exception and a reservation.

(*a*) It is to be observed, that, although the words "except" and "reserved" are frequently conjoined, yet an exception and a reservation are things totally different. For an exception must be of part of the thing granted, and of a thing in esse at the time of the grant; but a reservation must be of some new thing created out of the thing granted. (Co. Litt. 47. a.; Shepp. Touchst. 80). Thus, an exception may be of a house, or a close of land comprised in the property granted, or of trees generally, or specified trees; (Shepp. Touchst. 78); while a reservation is of a rent, or a right of way. (Ib. 80; *Bush* v. *Calis*, 1 Show. 388; *Domina Russell* v. *Gulwell*, Cro. Eliz. 657).

Requisites of an exception.

An exception must be of part of the thing granted, and not of some other thing: thus, in a grant of a manor, or close of land, parcel of the manor may be excepted, but not a close which is not parcel or tithes; (Shepp. Touchst. 78, 79); it must, of course, be of a part only of the thing granted, for an exception of the whole is absurd and void. (Ib.; *Dorrell* v. *Collins*, Cro. Eliz. 6; 3 Leon. 64). And an exception must not be repugnant to the grant; that is, it must not be of such a kind as to render nugatory any part of the grant. Thus, in a grant of land, an exception of the profits, or the pasturage, is void; (Shepp. Touchst. 79); so if a man demise a house and shops, excepting the shops, the exception is void; (*Horneby* v. *Clifton*, Dyer, 264 a); or if a man demise his estate in certain lands, excepting one moiety, or demise twenty acres, excepting ten acres, these are void exceptions. (*Miller* v. *Pratt*, Ib. n. (40); *Legh* v. *Heald*, 1 B. & Ad. 622). So, if there be a lease of a parsonage, excepting the glebe, or of a manor, excepting the demesnes, or the services of the court baron, these exceptions are void. (*Maydew* v. *Yeaxley*, Dy. ubi supra; Shepp. Touchst. 79). It seems, however, that the king may grant a manor excepting the courts or perquisites, (*Sir Robert Acton's case*, Dyer, 288 b), and that a court-leet may be excepted out of any grant of a manor. (Ib. note). See, further, with regard to exceptions, Shepp. Touchst., ubi supra; Com. Dig. Fait, E. 5; and as to the distinction between a saving and an exception, see T. Raym. 359; Plowd. 361.

An exception

An exception out of an exception is good, and of course makes

present demise, all brick earth, clay, and clay pits, fish, fishponds, timber, and other trees, wood, underwoods (*b*), OF A FARM. clay, fishponds, timber, and bushes.

the thing as though it had never been excepted; as in the lease of a rectory, except the parsonage house, saving to the lessee a chamber in the house. (*Leigh* v. *Shaw*, Cro. Eliz. 572; Ow. 20). out of an exception.

With respect to reservations, see Shepp. Touchst. 80. Reservation.

(*b*) If a manor be leased, excepting the woods and underwoods, the soil on which they grow is excepted. (Bro. Abr. *Reservation*, pl. 39; *Liford's case*, 11 Co. Rep. 49 b; Dyer, 79 a, pl. 48; *Ive* v. *Sams*, Cro. Eliz. 521; *Whilster* v. *Paslow*, Cro. Jac. 487). And where the exception was of wood, underwood, coppices, and hedge-rows, standing, growing, and being in and upon the *premises*, it was held that the soil of a coppice was excepted, overruling the argument that the coppice being described as standing on the "premises" (præ dimissa) shewed that the soil was considered to be demised. (*Hide* v. *Whistler*, Poph. 146). A coppice, it was said, signified a parcel of land fenced for the safeguard of young trees. It should, however, be observed, that the lease contained a covenant by the lessee to make fences; but if the lessor made new coppices, the lessee was not to make fences about them. An exception of trees does not include the soil on which they grow. (See the cases previously cited, and *Legh* v. *Heald*, 1 B. & Ad. 622). But it should be observed, that in *Legh* v. *Heald*, the demise was of a tenement "containing nineteen acres," and without the woodland there would have been only thirteen, and this alone, it is apprehended, would have made void the exceptions of the soil. (See supra, p. 44, n. (*a*)). In an early case, (*Smith* v. *Bole*, Cro. Jac. 459), an exception of trees was said to include the soil, and the same doctrine seems to have been asserted in *Roles* v. *Rock*; (2 Selw. N. P. 1287); but the reverse is clearly the law. If there be a demise excepting trees and timber, the lessee is not bound to protect the trees and timber, or the young shoots, from the depredations of his cattle. (*Clithero* v. *Higgs*, Sir W. Jones, 388; *Glenham* v. *Hanby*, 1 Ld. Raym. 739). The lessor has a power, as incident to the exception of trees, to enter upon the land to fell and take them away; (Co. Litt. 56. a.; 11 Co. Rep. 52; *Heydon* v. *Smith*, Godb. 173; *Jackson* v. *Cater*, 5 Ves. 688; see, too, *Hinchcliffe* v. *The Earl of Kinnoul*, 5 Bing. N. C. 1); but it is usual to add a reservation of all necessary rights. Exception of words and trees; —what it includes.

Sometimes the trees are not excepted out of the demise, but a power is reserved to the lessor to enter and cut them. The distinction is material with regard to the lessor's remedy, in case of the lessee's injuring the trees; for if they be excepted, the lessor's remedy is by an action of trespass; whereas, if they be included in the demise, with a power reserved to enter and cut them, his remedy will be as for waste. (*Foster* v. *Spooner*, Cro. Eliz. 18; *Lushford* v. *Saunders*, Cro. Eliz. Effect of a reservation of a right of entry to cut trees.

OF A FARM.

willows, alders, sallows, thorns, and bushes, which, during the term hereby granted, shall be in or upon the said

---

690; *Pincomb* v. *Thomas*, Cro. Jac. 524; *Goodright* d. *Peters* v. *Vivian*, 8 East, 190). A reservation of a right of entry to cut wood, does not, of course, amount to an exception of the soil; and where there was an exception of saleable underwood, with a reservation of a right of entry for the purpose of felling and carrying away the timber, it was held that the soil was not excepted. (*Pincomb* v. *Thomas*, Cro. Jac. 524).

What trees are included in an exception of trees.

An exception of trees generally does not include fruit trees; (*Wyndham* v. *Way*, 4 Taunt. 316, 318); and even where the exception in a lease of lands, in a cider county, was of "all timber trees, and other trees, but not the annual fruit thereof," it was held that apple trees were not included in the exception, for fruit, in legal language, applies to the produce of all trees, and not merely to the produce of what are usually termed fruit trees. (*Bullen* v. *Denning*, 5 B. C. 842; S. C. 8 Dow. & Ry. 657). "Other trees," means trees of the descriptions previously mentioned, as in *Bullen* v. *Denning*, and in *Lord Zouch* v. *Moore*, (2 Roll. Rep. 274, 335, 358), where an exception of apple and other trees, was held to include all other fruit trees. Timber trees are oak, ash, and elm, of not less than twenty years' growth, (*Foster* v. *Leonard*, Cro. Eliz. 1; *Aubrey* v. *Fisher*, 10 East, 446); and such other trees, as, according to the custom of the county, are considered timber; (see 1 Cru. Dig. by White, p. 116; *Rabbet* v. *Raikes*, Woodf. L. & T. 224); but it would seem that no tree can be deemed timber unless it be of the age of twenty years or upwards. (*Aubrey* v. *Fisher*, ubi supra). As to what may be deemed underwood, or saleable underwood, see *The King* v. *Ferrybridge*, 1 B. & C. 375; *The Queen* v. *The Inhabitants of Narberth*, 1 Per. & Dav. 590.

Property in trees not excepted.

If the trees be not excepted, the lessee has an interest in their fruit and shade, and the lessor cannot fell them. (*Herlakenden's case*, 4 Rep. 62; 1 Ld. Raym. 552). The property, however, of the trees is in the lessor, and if they be blown down or cut by the lessee, the lessor is entitled to them. (Ib.; and *Evans* v. *Evans*, 2 Camp. 491; *Berriman* v. *Peacock*, 9 B. & C. 384; *Ward* v. *Andrews*, 2 Chit. 636; *Wyndham* v. *Way*, 4 Taunt. 316). But it seems that the hedges and bushes belong to the tenant. (*Berriman* v. *Peacock*, ubi supra). With respect to the right to decayed trees, or trees which are fit only for firewood, see *Herlakenden's case*, 4 Co. Rep. 62; *Liford's case*, 11 Co. Rep. 49 b; Co. Litt. 53. a.; *Perrot* v. *Perrot*, 3 Atk. 94; *Whitfield* v. *Bewit*, 2 P. Wms. 240; S. C. 3 Id. 266; *Wickham* v. *Wickham*, 19 Ves. 419; *Channon* v. *Patch*, 5 B. & C. 897; S. C. nom. *Chapman* v. *Patch*, 8 Dow. & Ry. 658; *Simmons* v. *Norton*, 7 Bing. 640; S. C. 5 Moo. & Pay. 645.

OF A FARM.

premises, WITH LIBERTY of ingress, egress, and regress, to and for the said A. B. and his assigns, to dig, cut, fell, top, stub up, convert, and carry away the said brick earth, clay, fish, timber and other trees, wood, underwood, alders, willows, sallows, thorns, and bushes, and to plant all sorts of trees in the several banks or hedgerows of the said demised premises, and to view the condition thereof, and to bring materials thereon, and to repair or renew the same; AND for him the said A. B., and his assigns, friends, companions, and game-keepers, agents and servants, at all seasonable times in the year, to hunt, shoot, course, fish, fowl, and sport, in, over, and upon the said demised premises, and for all other reasonable purposes: TO HAVE AND TO HOLD the said messuage, tenement, farm, lands, and hereditaments, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, from the —— day of ——, for the term of —— years thence next ensuing, if the said A. B. shall so long live, YIELDING AND PAYING therefore, yearly and every year during the said term hereby granted, unto the said A. B., his executors, administrators, and assigns, the yearly rent or sum of £——, clear of all existing and future taxes and deductions whatsoever, except the land tax, by equal payments, on the 6th day of January, the 6th day of April, the 6th day of July, and the 11th day of October in each year, the first payment thereof to be made on the —— day of —— next, and the last payment thereof on the —— day of —— preceding the end of the said term, in case the same term shall end by effluxion of time, and not be determined by the death of the said A. B. (*c*): AND

—with right of entry to cut and plant trees, &c., and to inspect condition;

—and for sporting purposes;

—and for general purposes. Habendum for a term determinable with life of lessor.

Reddendum of a certain yearly rent;

—and of an additional rent for ploughing

An executor of a lessor may sue a lessee for injuring trees in the lessor's lifetime. (*Raymond* v. *Fitch*, 2 Cro., Mee. & Ros. 588).

(*c*) Rent reserved on a lease may be made payable at such times as the parties appoint, and in modern leases it is generally made payable in equal half-yearly or quarterly payments. If it be reserved generally, it is payable at the end of the year. (3 Bulst. 329; 1 T. R. 425; see, too, *Carter* v. *Pryke*, Peake, 95). If, in a lease, the rent be made payable at Michaelmas and Lady-day, *during the*

At what times rent is payable.

OF A FARM.

pasture, or misusing arable land.

ALSO YIELDING AND PAYING unto the said A. B., his executors, administrators, and assigns, over and above the

---

term, though there be no words referring to a yearly payment, yet the payment will be deemed to be yearly during the term. (2 Roll. Abr. 449). If the rent be made payable at the two most usual feasts, Lady-day and Michaelmas will be understood, and the rent will be payable in equal portions. (*Harrington* v. *Wise*, 2 Roll. Abr. 450). But if the lease be made on a day not one of the usual feasts, and the rent be made payable half-yearly or quarterly, the payment will be in equal portions on the half-yearly and quarterly days computed from the date of the lease. (Id.) If the rent be made payable at certain days, *or* within a specified time after such days, it will not be payable till the end of the specified time, for that is evidently most for the advantage of the lessee. (*Clun's case*, 10 Rep. 127 ; *Glover* v. *Archer*, 2 Leon. 427).

In such a case, however, if the lease end on one of the days of payment, the last payment of rent becomes due on the last day of the term ; for, as the rent could not be reserved to be payable after the end of the term, the law will reject the extended time, so far as relates to the last payment. (*Barwick* v. *Foster*, Cro. Jac. 233, 310 ; *Biggin* v. *Bridge*, 3 Leon. 211 ; 3 Keb. 534). If the rent be made payable on certain days, and the day first named be not that on which the first payment of rent ought to be made, still the first payment will become due on that day. (Co. Litt. 217. b. ; *Hill* v. *Grange*, Plowd. 171).

At what times it should be made payable.

In framing leases, the rent ought always to be reserved yearly, during the term, and to be made payable on stated days of the month, (not on stated feast days), half-yearly or quarterly, as may be agreed on. In the absence of instruction on the point, the rent should be made payable half-yearly. The first day on which payment is to be made should always be stated; and it is apprehended that in a lease for a term determinable with a life, (as in the case in the text), the first payment should be made contingent on the cestui que vie being then living ; and that there should be a separate reddendum of a proportionate part of the rent to be paid on the day of the lessee's death, if the lessee should die before the first day of payment, or on any day not being a day of payment. (See infra, Precedent VIII.).

The object of making the last payment of rent payable on a day before the expiration of the term is, that the lessee may have the opportunity of distraining for it before the lessee's goods be removed. For, if the first payment do not become due till the last day of the term, the lessee cannot distrain for it till the last minute of the day, and then the goods will have been removed. (*Duppa* v. *Mayo*, 1 Saund. 287). The clause in the text is not, however, always, added.

OF A FARM.

certain yearly rent hereinbefore reserved, and by like quarterly payments, the further yearly rent or sum of £—— for every acre, and so in proportion for a less quantity than an acre, of the meadow or pasture, or heath lands hereby demised, which shall during the said term be ploughed or converted into tillage, and the further yearly rent or sum of £—— for every acre, and so in proportion for a less quantity than an acre, of the arable land hereby demised, which shall during the said term be over cropped, or used contrary to the course of husbandry hereinafter prescribed; the first payment of the said yearly rents or sums lastly hereinbefore reserved to be made on such of the said days of payment as shall first happen, after any such ploughing, conversion into tillage, over cropping, or misusuage, (as the case may be), and to continue during the residue then to come of the said term (*d*); AND THE

Covenants by

(*d*) If an additional rent be reserved for the land which the tenant shall plough, or shall cultivate otherwise than in a prescribed manner, that rent is not in the nature of a penalty, but of liquidated damages, and is therefore to be paid exactly as reserved. (*Aylet* v. *Dodd*, 2 Atk. 238; 3 Atk. 396; *Farrant* v. *Olmius*, 3 B. & Ald. 692). And where the lessee covenants not to plough, and if he does to pay an additional rent, the construction is the same. (*Rolfe* v. *Peterson*, 2 Bro. P. C. 436). And there is no relief in equity against such a covenant. (*Rolfe* v. *Peterson*; *Aylet* v. *Dodd*, ubi supra; *Woodward* v. *Gyles*, 2 Vern. 119). And where a lessee covenanted to crop and manage a farm in a specified manner, and in default of so doing to make additional yearly payments of rent, it was held, that on a bill filed by the lessor, for discovery of breaches of the covenants in aid of an action at law, a plea by the tenant, that the discovery might subject him to penalties, could not be sustained. (*Jones* v. *Green*, 3 You. & Jer. 298). It is said, however, that if there be a covenant not to plough, and a penal rent for ploughing, a court of equity will relieve against the penalty on compensation for the damage—per Lord Mansfield, 4 Burr. 2229; this, however, may be doubted; see *Woodward* v. *Gyles*, ubi supra.

Penal rents for changing the nature of the land.

Where the reservation was of an additional rent, during the last twenty years of a term, for every acre of meadow which should be ploughed, broken up, or converted into tillage, during the said last twenty years of the term; it was held, that the rent was due in the last twenty years if the land was then ploughed, whether it was first ploughed in the twenty years or before; and that the rent continued payable during the twenty years, though the land was

On what acts such penal rents are payable.

OF A FARM.

lessee for payment of rent;

SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B.,

---

again laid down to permanent grass. (*Birch* v. *Stephenson*, 3 Taunt. 469). As to what is permanent grass, see the same case.

Lands ploughed shortly before the commencement of the term, are not rendered pasture so as to prevent the tenant from breaking them up by his having for thirty years of the term allowed them to continue pasture. (*Goring* v. *Goring*, 3 Swanst. 661). But it seems that if lands are described as meadow in the lease, that is sufficient primâ facie, and perhaps conclusive, evidence of their being of that nature. (*Birch* v. *Stephenson*, ubi supra). It is apprehended that if the lands had shortly before the commencement of the term been ploughed, but before the commencement had been restored to permanent grass, and been so described in the lease, the tenant would be precluded from breaking them up.

As to a penal rent becoming payable on the tenant suffering any part of the land to be occupied by others, see *Greenslade* v. *Tapscott*, 1 C., M. & R. 55; S. C. 4 Tyr. 566.

Not waived by acceptance of original rent.

Where the lessee has broken the stipulation, the lessor does not waive his right to the additional rent by having knowledge of the breach, and subsequently accepting the original rent; for a sum due in respect of liquidated damages cannot be waived like a forfeiture. (*Denton* v. *Richmond*, 1 Cro. & Mee. 734).

Equitable aid and relief.

If there be a penal rent reserved on certain acts done, a court of equity will not grant an injunction to restrain the tenant from doing those acts, because the parties themselves have set a price on the damage. (*Woodward* v. *Gyles*, 2 Vern. 119.) But if, in addition to the penalty, the act done be attended by forfeiture of the lease, an injunction will be granted. (*Barret* v. *Blagrave*, 5 Ves. 555). If there be a covenant simply not to do the act, an injunction will be granted. (*Lord Grey de Wilton* v. *Saxon*, 6 Ves. 106). And if there be a covenant to manage pasture in a husbandlike manner, an injunction will be granted against breaking it up. (*Drury* v. *Molins*, 6 Ves. 328).

As to changing the nature of the land when there is no express stipulation on the subject.

It may be observed, that, in the absence of special stipulation, it is waste for a tenant for years to plough up pasture, or otherwise change one kind of land into another. (Co. Litt. 53. b.; Dyer, 37 a; *Gunning* v. *Gunning*, 2 Show. 8; *Simmons* v. *Norton*, 7 Bing. 640); and so for a tenant for life, (*Worsley* v. *Stewart*, 4 Bro. P. C. 377), or a guardian. (*Clark* v. *Thorp*, 2 Ves. Sen. 232). And it is no defence that such change is for the benefit of the land, or according to the custom of the country. (*Simmons* v. *Norton*; *Clark* v. *Thorp*, ubi supra). A court of equity will grant an injunction against such waste in a tenant for life; (*Worsley* v. *Stewart*, ubi supra; *Goring* v. *Goring*, 3 Swanst. 661); or in a tenant for years. (*Cope* v. *Smith*, 1 C. P. Cooper, 110, 113; see, too, *Pratt* v. *Brett*, 2 Madd. 62).

OF A FARM.

his executors, administrators, and assigns, in manner following, (that is to say), THAT he the said C. D., his executors, administrators, or assigns, shall and will pay, or cause to be paid, the said certain yearly rent hereinbefore reserved, and also (if the same shall become payable) the said additional yearly rents hereinbefore reserved, at the times and in manner hereinbefore mentioned or appointed for payment of the same respectively: AND ALSO ALL taxes, rates, payments, assessments, and outgoings whatsoever, to grow due in respect of the said premises, (except the land tax), and all tithes and tenths payable in respect of the said premises, or the proportionate amount of the rent charge, or commutation rent, chargeable, or which may hereafter become chargeable upon the demised premises, in lieu of such tithes and tenths as aforesaid, at the times at which such tithes or commutation rent shall become due, and ought to be paid, and are or shall be by law recoverable from the said A. B. or his assigns, or the owner or proprietor for the time being of the said premises hereby demised (*e*): AND THAT the said C. D., his executors,

—and taxes;

—and tithes, or commutation rent-charge;

—and that lessee

Further cases.

See further on the subject of this note, *Hastings* v. *Cooper*, Tothill, 52; *Curteen* v. *Heveene*, Id. 114; and the cases collected, Id. 143, 144; *Atkins* v. *Temple*, 1 Rep. Cha. 8; S. C. Tothill, 209; *Cole* v. *Peyson*, 1 Rep. Cha. 57; *Hermier* v. *Maund*, Id. 62; *Tregonwell* v. *Lawrence*, 2 Rep. Cha. 49; *Martin* v. *Coggan*, 1 Hog. 120; *Morris* v. *Morris*, Id. 238.

Change of the purpose of a mill.

In a case where a mill was demised as a logwood mill, and was afterwards altered by the lessee to a cotton mill, an injunction was refused, on the ground that the lessor had stood by, without objecting, while the alteration was made, and afterwards. (*Brydges* v. *Kilburn*, 5 Ves. 699 cited).

Commutation rent for tithes as between landlord and tenant.

(*e*) By the stat. 6 & 7 Will. 4, c. 71, s. 67, the commutation rent charge in lieu of tithes is charged on the land, but no person is to be personally liable to the payment of the rent charge. By sections 79 and 80 of the same act, any tenant who, at the time of the commutation, shall hold at rack-rent, may dissent from paying the rent charge, and in such case the landlord may take the tithes during the tenancy; the tenant is to pay the rent charge, and is to be allowed the same in account with the landlord. The clause in the text is framed with a view to the two last-mentioned clauses, for a lease of lands in a parish where the commutation has not taken place. After the com-

OF A FARM.

see will inhabit farm-house;

—and keep buildings, fences, &c., in repair;

administrators, or assigns, shall and will personally inhabit, with his or their family, the said demised messuage or farm-house, and make the same his or their usual place of residence, and shall not desert or shut up the same during the continuance of the said term (*f*) : AND SHALL and will from time to time, and at all times during the continuance of the said term, at his and their own costs and charges, well and sufficiently repair, support, maintain, scour, cleanse, and keep the said messuage and farm-house, and all other the edifices and buildings hereby demised, and all the bridges, gates, pails, rails, and fences both live and dead, water-courses, dykes, drains, ditches, and appurtenances to the said house, building, farm, and lands belonging, and any new buildings which may be erected upon the said premises, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, (except such

---

mutation has taken place, it will suffice to reserve the rent clear of the commutation rent charge, and to make the tenant covenant for payment of the commutation rent charge along with the other outgoings.

Covenant to reside.

(*f*) The covenant in the text only amounts to this, viz. that the owner for the time being of the lease shall reside on the premises, and that they are not to be shut up and deserted. A covenant of this description, it may be observed, is a highly useful and proper covenant in a lease of a mill, or public-house, or any similar property, the value of which would be destroyed, or materially injured, by being shut up for a time; and the covenant should bind the lessee, or his assigns, to carry on the business during the term, in a fair and usual manner. If the covenant be for the lessee, his executors, and administrators, personally to reside, it must be literally fulfilled. For where a term of 21 years was granted, "if the lessee, his executors, &c., (*it does not appear from the report what is covered by the "&c."*), should so long continue to inhabit and dwell, with his and their family, in the farm-house, and he, his executors, &c., should so long continue actually to hold and occupy the said lands and premises," and not assign; and the tenant became bankrupt, and the assignees put the tenant out of possession, and sold the lease, it was held that the lease absolutely determined on the tenant ceasing to reside. (*Doe* d. *Lockwood* v. *Clarke*, 8 East, 185; see, too, *Doe* d. *Duke of Norfolk* v. *Hawke*, 2 East, 480). In this case, however, the lease actually ceased by virtue of the condition, and there was no forfeiture; but it is apprehended that there would be no relief against a re-entry for breach of such a covenant as that above mentioned.

of the repairs and amendments hereinafter mentioned, as shall be done by the said A. B. or his assigns, in pursuance of the covenant hereinafter on his part in that behalf contained), when, where, and so often as need or occasion shall be or require, and whether particularly required by notice or not, he the said A. B. or his assigns, upon reasonable request and timely notice to him or them in writing as hereinafter mentioned, providing and allowing on the said premises, or within —— miles distance therefrom, sufficient rough timber, bricks, tiles, lime, and iron, (except gate irons), for such repairs, (all such timber and materials, as well for repairs as for the erection of any such new buildings as aforesaid, to be cut and carried respectively at the tenant's expense), and damages happening to the said farm-house and buildings by fire and tempest always excepted out of this present covenant to repair: PROVIDED NEVERTHELESS, that the covenant hereinbefore contained on the part of the said C. D., to repair and maintain the said premises hereby demised, shall not extend to or include the bullock sheds at present upon the said premises, the coach-house, the wall before the house, and the wall of the bullock-yard, unless or until the same, respectively, shall have been first put into good and substantial repair, at the costs and expenses of the said A. B. or his assigns: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, or assigns, shall and will, from time to time during the continuance of this demise, repair, maintain, preserve, and keep in good order, all plantation fences in, upon, or next adjoining to the said lands hereby demised, the said A. B. or his assigns paying a moiety of the expense of first putting such plantation fences into good order and repair, and afterwards allowing stakes and braiding, or fencing thorns and white thorn layer, when necessary, towards the future repair of the said fences, but without making any other allowance or any other remuneration in respect of the same: AND ALL AND SINGULAR the said demised premises, being so well and sufficiently repaired,

—the landlord finding materials;

—damage by fire excepted.

Lessee not to repair certain things till they be put in proper repair.

Covenants by the lessee to keep in repair adjoining plantation fences;

—and to yield up the demised premises at the

OF A FARM.

end of the term in good condition;

supported, maintained, and amended, scoured, cleansed, and kept, shall and will, at the end or other sooner determination of the said term hereby granted, peaceably yield, surrender, and give up, together with any new buildings or erections thereon, and all such fixtures as are in any way affixed or fastened to the freehold of the said premises, and as between landlord and tenant are usually considered the property of the landlord, unto the said A. B. or his assigns, or the person or persons for the time being entitled to the freehold or reversion of the said premises immediately expectant on the determination of the said term (timber and materials being allowed as hereinbefore and hereinafter mentioned, and damages by fire and tempest happening to the said farm-house and the buildings always excepted): AND THAT it shall be lawful for the said A. B. and his assigns, and the trustees for the time being acting under the will of ——, dated the —— day of ——, or the settlement executed in pursuance thereof, dated the —— day of ——, and his and their agents, servants, or workmen, twice or oftener in every year during the continuance of the said term hereby granted, to enter or come into and upon the said demised premises, or any part thereof, there to view, search, and see the state and condition of the same; and of all defaults, decays, or wants of reparation, then and there found, to give or leave notice, in writing, for the said C. D., his executors, administrators, or assigns, to repair and amend the same within three calendar months from the day of such notice, within which said time, he the said C. D., his executors, administrators, or assigns, shall and will repair and amend the same accordingly: AND ALSO, THAT it shall be lawful for the said A. B. and his assigns, in case he or they shall be desirous so to do, at any time or times during the continuance of the said term, to remove any cottage or cottages now standing and being upon the said premises, or to pull down and alter the site or position of any cottage or cottages on the said farm, and to build any other cottage or cottages in lieu thereof, in or upon such other part or parts of the said farm as he or they may think fit: AND FURTHER, THAT he the said C. D., his executors,

—and that lessor and certain trustees may enter and inspect premises;

—and that, on notice, lessee will repair;

—and that lessor may remove and build cottages;

—and that les-

administrators, or assigns, shall yearly perform —— days' carriage work with a waggon and team of horses, for the carriage of coals to —— hall aforesaid, or otherwise, for the use of the said A. B. or his assigns, not exceeding the distance of —— miles from —— hall aforesaid: AND SHALL supply to and for the use of, and deliver at the said hall, once in every year during the continuance of the said term, four waggon loads of good wheat-straw, without being paid or receiving any remuneration for the same (*g*): AND SHALL yearly, during the said term, cause not less than one-sixteenth part of the fences belonging to the premises to be properly cut and scoured, and ditches made thereto, four and a half feet wide at the top, one at the bottom, and three and a half feet deep perpendicularly, and plant white thorn layer in the vacant places, when and where the said A. B. or his assigns, or his or their agent, shall appoint, and in default of such appoint-

see will do certain carriage work for lessor;

—and furnish him with a certain quantity of straw;

—and cut, &c., yearly, a certain proportion of the fences, and manage them in a specified manner.

(*g*) A covenant of this sort should be so framed as to shew, whether the performance of the covenant is restricted to any particular locality or not. Where the lessee covenanted "that he and his executors should fetch and bring to the dwelling-house of the lessor, his heirs and assigns, 75 bushels of coals, from Poole, yearly and every year during the term of 12 years, from the 29th day of September then last past, [*the term of the lease*], and all the peat, turf, and other fuel, and also supply him with wood for his fencing and hedging his lands gratis, when reasonably required, and also permit the lessor, his heirs and assigns, [*to feed certain animals on the demised premises*]; and also, yearly and every year during the said term, supply the said lessor, his heirs and assigns, with so much good wheat as he or they should want to expend in his or their family, at five shillings a bushel; and also, so much good barley and oats as he or they might want for his or their horses, pigs, and dogs, at two shillings and sevenpence half-penny per bushel, and, in failure of the performance thereof, or any part thereof, pay to the lessor, his heirs and assigns, the sum of £100, in lieu and satisfaction thereof;" and the lessor afterwards removed from the house in which he then resided to another in the same parish, which he possessed at the date of the covenant: it was held that as the stipulations as to coal, fuel, wood, and cattle, were clearly local, and confined to the plaintiff's dwelling-house at the date of the covenant, the covenant as to the wheat must be similarly construed. (*Caker* v. *Guy*, 2 Bos. & Pul. 565; see, too, the note, Id. 568).

Covenant to perform services, and proviso for the lessor.

OF A FARM.

ment, where most necessary, and weed the same twice in each year during the first three years after planting the same, and preserve the same from damage by sheep or cattle, and in all other respects; and shall not pare off the back of the fences, or cut away banks, or remove the soil from any of the fences upon the said farm, without the license in writing of the said A. B. or his assigns first obtained, and shall not injure the roots of any of the trees growing or being in any of the said fences or banks, but shall and will, where any of the said lands shall be ploughed, leave at least three quarters of a yard unploughed or unconverted into tillage, from the stub of the larger or quickset backs of the fences upon the said farm, and shall not nor will cut any of the thorns growing in the said fences on the back side thereof, but shall and will, when occasion requires for the stopping of gaps or any other reasonable purpose, cut such thorns from the brow of the fences, under a penalty of paying to the said A. B. or his assigns ten shillings per rod for every rod of fencing which shall be managed contrary to the stipulations hereinbefore contained; and shall and will, from time to time, when thereunto required by the said A. B. or his assigns, raise and make any new fence or fences in or upon any part of the said lands hereby demised, in the place of any old fences which the said A. B. or his assigns may require to have levelled, or the white thorn layer of which may have decayed or worn out, the said A. B. or his assigns supplying the necessary white thorn layer and young trees, if any, that may be required to be planted, and contributing one-half the other expenses of raising and making such new fences as aforesaid, and shall clip with shears in a proper manner, twice in every year, such hedges as have been usually cut or clipped: AND SHALL preserve all the young trees, layers, and quicksets, shoots, and saplings from oak, ash, elm, or other stubs of trees which have heretofore been felled, and all fences, now or at any time during the said term standing, growing, or being upon the said premises or any part thereof, from being injured by cattle or sheep: AND SHALL not fell, lop, or top any pollards: AND SHALL also cut open and spread, when required or necessary, all

—and preserve saplings, &c., from damage;

—and not lop pollards;

—and spread

the ant-hills and mole-hills which shall be upon the said demised premises, and destroy the rats and mice, ants and moles, upon the said premises, and shall and will yearly, during the continuance of the said term, as often as necessary, mow and destroy the rushes, nettles, and other weeds growing upon the pasture lands or any part of the said farm, and also weed the fences belonging thereto, to prevent the weeds seeding or growing thereon, and clean out properly all the water ditches and open drains annually on such pasture lands: AND FURTHER, THAT he the said C. D., his executors, administrators, or assigns, shall and will warn off all presons who during the said term shall hunt, hawk, fish, or sport upon the said premises, without the license or consent of the said A. B. or his assigns, and that he the said C. D., his executors, administrators, or assigns, shall and will give to the said A. B. or his assigns immediate notice of any person who shall hunt, hawk, fish, or sport upon the said premises: AND THAT it shall be lawful for the said A. B. and his assigns, in case any person or persons shall during this demise hunt, hawk, fish, or sport upon the said hereby demised premises, to bring any action or suit and prosecute the same at law, or otherwise proceed against such person or persons in the name or names of the said C. D., his executors, administrators, or assigns, and that he or they shall not release or discharge any such action or suit without the consent in writing of the said A. B. or his assigns, provided the said C. D., his executors, administrators, or assigns, shall be indemnified from the costs thereof: AND ALSO, THAT he the said C. D., his executors, administrators, or assigns, shall and will, at all times during the continuance of the said term, use and manage all the said arable lands, and at the end thereof leave and deliver up the same to the said A. B. or his assigns in four equal shifts or divisions, according to the four course system of cropping and husbandry practised in Norfolk, as nearly as the size of the several closes of land will admit (that is to say), shall yearly cause one of the said four shifts, being in stubble, to be properly summer-tilled with four clean earths or ploughings, and sufficiently harrowed and cultivated, and sown with turnips or mangel-wurzel, which are

ant-hills, &c., and destroy vermin, nettles, &c.

—and clean ditches;

—and that lessee will warn off sportsmen, and give lessor notice of them;

—and that lessor may sue them in the name of the lessee;

—and that lessee will manage arable lands in a specified course of husbandry.

OF A FARM.

to be twice well hoed and preserved in a clean and proper state and condition for a green crop: another of the said shifts to be properly ploughed and harrowed and sown with barley or oats immediately after turnips or mangel-wurzel, and laid down therewith with a sufficient quantity of good sound clover or other clean artificial grass seeds, and to be continued so laid down with grass coming from such seeds, at least fourteen months after the sowing of the same: another of the said shifts to be properly ploughed and harrowed, and sown with winter corn, oats, or peas, and the remaining shift to be olland or layer of at least fourteen months' laying: PROVIDED, NEVERTHELESS, and it is hereby agreed, that the said C. D., his executors, administrators, or assigns, shall be at liberty in any year (except the last year) of the said term to sow any quantity of the arable lands, not exceeding twenty acres, with peas or beans instead of having the same in layer, the said C. D., his executors, administrators, or assigns, manuring such land, before or immediately after such crop of peas or beans, at the rate of eight good loads of muck or a quarter of a ton of rape cake per acre; and also that the said C. D., his executors, administrators, or assigns, shall be at liberty in any year (except the last year) of the said term to sow with wheat any quantity of the said arable lands not exceeding ten acres after turnips, in lieu of summer corn: AND IT IS AGREED, that the grass seeds to be sown with the summer corn on one of the said divisions in the last year of the said term, in case the said term shall expire by effluxion of time, and shall not determine by the death of the said A. B., shall be provided and sown by the said A. B. or his assigns, or his or their succeeding tenant, but shall be harrowed in by the said C. D., his executors, administrators, or assigns, at his or their own expense, who shall preserve and keep the grasses coming from such seeds unfed until the end of the said term, except by hogs well ringed, and shall give at least ten days' notice in writing to the said A. B. or his assigns, of his intention of sowing such summer corn, and that it shall be lawful for the said A. B. and his assigns, or the person or persons entitled as aforesaid, or the next incoming tenant, to sow

Lessee to be allowed, on certain terms, to vary the course.

Lessor to find grass seeds for the last year of the term.

grass seeds with the Lent or summer corn in the last year of the said term, in case the same shall expire by effluxion of time, and not be determined as aforesaid, the said C. D., his executors, administrators, or assigns, harrowing in the same without being allowed for the same: PROVIDED NEVERTHELESS, that if the said C. D., his executors, administrators, or assigns, shall, during the said term hereby granted, continue in grass any of the arable lands laid down in grass for two years and three months, to be computed from the time of sowing the seeds, then he or they shall be at liberty to take two successive crops, one of which shall be a crop of peas or beans, but, nevertheless, all the said farm shall be left in a four course shift at the end of the said term, and in a husbandlike state and condition; AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, or assigns, shall not nor will, without license in writing from the said A. B. or his assigns for this purpose first obtained, mow more than a moiety of the arable lands on the said farm which shall be sown with wheat, under the penalty of paying to the said A. B. or his assigns £1 per acre, in respect of every acre over and above the said moiety which shall be mown contrary to this covenant, but shall and will reap with a sickle or reap-hook a moiety of the said arable land which shall be sown with wheat in any year of the said term; and that the arable lands which shall be sown with wheat, and which shall be nearest to the park called —— Park, shall be included in and form part of such last-mentioned moiety: AND ALSO THAT he the said C. D., his executors, administrators, and assigns, shall and will spend and consume into muck with cattle in a husbandlike manner, in the yards or upon the demised premises, all the hay, straw, chaff, fodder, and turnips, which shall arise from the premises during the first seven years of the said term, and shall at seasonable times and in an husbandlike manner lay and spread the same, during the said first seven years, upon such parts of the demised lands as shall most need the same, and shall use all the muck made previously

Lessee to be allowed, in certain cases, to take two successive crops.

Covenants by lessee not to mow more than a moiety of the wheat lands;

—and to make all the straw, &c., into muck, and duly use the same.

OF A FARM.

to the last day of May, in the last year of the said term, for mucking the turnips to be left at the end thereof; AND SHALL leave, for the use of the said A. B. or his assigns, all the muck, dung, and compost which shall be made upon the said premises after the said last day of May in the said last year, turned up in proper heaps in the demised yards, on or before the first day of October, for the use of the said A. B. and his assigns, without allowance; AND SHALL stack and leave for the said A. B. and his assigns, or his or their succeeding tenant, all the hay cut and made on the said farm in the last year of the said term, being paid for such hay, and for the feed of the new layers and turnips, or other vegetables to be left on the farm at the end of the said term, by valuation as hereinafter mentioned, and shall stack and lay all the crop of corn, grain, or pulse that shall grow on the said demised premises in the said last year, into the barns or stack-yards, or other convenient places belonging thereto, and thresh out the same in the said barns in the winter following, so that the said A. B. or his assigns may have the straw and chaff arising therefrom regularly, for his and their cattle, without any spoil or waste, and shall in the winter season deliver the same in the said barns, or other usual places on the premises, in a careful and husbandlike manner, for the use of the said A. B. or his assigns, without any allowance, who in default of such delivery may take the same; AND ALSO, THAT the said C. D., his executors, administrators, or assigns, shall not assign or underlet, or otherwise part with the possession of the said demised premises, or any part thereof, without the consent in writing of the said A. B. or his assigns, for that express purpose under his or their hand or hands first had and obtained (*h*): AND SHALL

—and leave muck for lessor at end of term;

—and hay and straw;

—and that lessee shall not assign or underlet without license;

—nor fell or cut trees, &c.

What words restrain assignment and under-letting;

(*h*) The restriction in the text is against assigning, underletting, or otherwise parting with the possession of the premises, and whenever the lessor means to prohibit every change of tenancy and possession without his consent, the covenant should be so framed. For a restriction on assignment, however generally expressed, does not prohibit an underlease, (*Crusoe, Lessee of Blencoe*, v. *Bugby*, 2 W. Blackst. 766; S. C. 3 Wils. 234; *Kinnersley* v. *Orpe*, 1 Doug. 56), nor a restriction on underletting prohibit an assignment. (See

NOT, during the said term, fell, stub, cut, destroy or spoil, or wilfully damage any timber trees, pollards, wood, or

OF A FARM.

Greenaway v. *Adams*, 12 Ves. 395). But both assignment and underletting are restrained by a condition "not to set, let, or assign;" (*Roe* d. *Gregson* v. *Harrison*, 2 T. R. 425); or by a condition "not to assign, or otherwise part with the premises, for the whole or any part of the term;" (*Doe* d. *Holland* v. *Worsley*, 1 Camp. 20); or by a covenant "not to let, set, or demise the premises for all or any part of the term." (*Greenaway* v. *Adams*, 12 Ves. 395).

—and by what acts the restriction is broken.

A restriction against underletting a house does not prevent the lessee from letting a room to a lodger for his exclusive use. (*Doe* d. *Pitt* v. *Laming*, 4 Camp. 77). But where the condition was not to "demise, lease, grant, or let the premises, *or any part or parcel thereof*," and not to assign the indenture of lease, or the lessee's interest therein, or any part thereof; and the lessee agreed with another person to enter into partnership with him, and that he should have the use of certain parts of the premises exclusively, and of the rest jointly with the lessee, and let him into possession, it was held, that the covenant was broken. (*Roe* d. *Dingley* v. *Sales*, 1 Mau. & Sel. 297). A condition restraining underletting is not broken by advertising the farm to be let; (*Gourlay* v. *The Duke of Somerset*, 1 Ves. & Bea. 68); and as to what is evidence of an underletting, see *Doe* d. *Hindly* v. *Rickarby*, 5 Esp. 4; *Doe* v. *Payne*, 1 Stark. 86. Where, in a lease for three lives, there was a proviso for re-entry if the lessee or his executors should lease for more than seven years without license; and the third life being in possession, as executor under his father's will, leased for fourteen years without license, it was held, that there was no forfeiture; for as the lease could not extend beyond the life of the lessor, it might not endure for seven years. (*Northcote* v. *Duke*, 1 Eden, 319).

General restriction does not include an assignment by operation of law.

A general restriction on assignment does not apply to an assignment by operation of law, as a sale by a sheriff under an execution. (*Doe* d. *Mitchinson* v. *Carter*, 8 T. R. 57). And it is of no moment that a warrant of attorney has been given to confess the judgment on which the execution has been sued out, unless, as happened in that case, the warrant of attorney was given in fraud of the covenant, and for the purpose of effectuating the sale. (S. C. 8 T. R. 300). So a lease passes to the assignees in bankruptcy, although it contain a general restriction on assignment; (*Goring* v. *Warner*, 2 Eq. Ca. Abr. 100; S. C. 7 Vin. Abr. 85; *Philpot* v. *Hoare*, Amb. 480); and the restriction does not operate to prevent the assignees from selling, although the restriction expressly includes "assigns." (*Doe* d. *Goodbehere* v. *Bevan*, 3 Mau. & Sel. 353). Whether the assign of the assignees is bound by the covenant, does not appear to have been decided; but in a case in which the restriction was

OF A FARM.

underwood, or any new quick fences, growing on the premises, under the penalty of paying to the said A. B. or

---

against assignment and underletting, but did not include "assigns" of the lessee, and the lessee became bankrupt, and the lease, being sold by his assignees, was subsequently purchased of the purchaser by the lessee himself, who underlet to another person, it was held, that there was no forfeiture. (*Doe d. Cheere* v. *Smith*, 5 Taunt. 795). And as the deposit of a lease by way of equitable mortgage has been decided to be no breach of a condition not to assign or "otherwise part with the lease" or premises, (*Doe* d. *Pitt* v. *Hogg*, 1 Car. & Pay. 160; S. C. 4 Dow. & Ry. 226; S. C. nom. *Doe* d. *Pitt* v. *Laming*, Ry. & Moo. 36), so it is now decided, that the assignees in bankruptcy may sell such a lease, not only for the benefit of the creditors at large, but also for the benefit of the equitable mortgagee. (*Ex parte Bagshole*, 1 Rose, 432; *Ex parte Sherman*, Buck, 462), overruling the dictum to the contrary in *Weatherall* v. *Geering*, 12 Ves. 504). An assignment by a lessee of all his property, real and personal, (including a lease with a condition against assignment), to trustees for the benefit of his creditors, but which assignment was avoided by a commission of bankrupt subsequently issued against the lessee, was held not to work a forfeiture. (*Doe* d. *Loyd* v. *Powell*, 5 B. & C. 308; 8 Dow. & Ry. 35).

Lease may be made determinable on bankruptcy or insolvency.

It is clear, that a lease may be made void or voidable upon bankruptcy, (*Roe* d. *Hunter* v. *Galliers*, 2 T. R. 133; *Hickinbotham* v. *Groves*, 2 Car. & Pay. 492), or upon the lessee's becoming insolvent, or upon a judgment being entered up against him, or a *fieri facias* or execution being sued out against him. (*Davis* v. *Eyton*, 7 Bing. 154). Provisions of this nature will be found in the proviso for re-entry, infra; for they are not matters for covenants, and it would perhaps be better if this covenant were omitted, and the condition as to assignment and underletting introduced expressly into the proviso for re-entry, instead of being included in that power among the other covenants, on the breach of which the proviso is to take effect.

When executors, administrators, and assigns of the lessee are restrained from assigning.

If the condition be that the lessee, his executors or administrators, shall not assign, it is of course broken by an assignment by an executor or administrator. (*More's case*, Cro. Eliz. 26; *Roe* d. *Gregson* v. *Harrison*, 2 T. R. 425; *Lloyd* v. *Crispe*, 5 Taunt. 249; *Mason* v. *Corder*, 7 Taunt. 9; 2 Marsh. 232). But if the condition apply only to the lessee personally, the executor or administrator may assign. (*Seers* v. *Hind*, 1 Ves. Jun. 295). It is however proper, as a general rule, to name the executors and administrators in the condition, and also to include the "assigns;" for although it was formerly held, that if a lease were made to a man and his assigns, alienation could not be restrained, (Hob. 170), yet the contrary is now clear. (Co.

his assigns £50 a load for every load of timber or wood, and £10 a tree for every young tree which shall be felled, OF A FARM.

Litt. 204. a., 223. b.), and the word "assigns" is not repugnant to the condition, because the lessee may have assigns by license, and (if there be no provision determining the lease on bankruptcy or execution) assigns in law. (*Weatherall* v. *Geering*, 12 Ves. 504, 511; see too *Paul* v. *Nurse*, 8 B. & C. 486; S. C. 2 Man. & Ry. 525, where Bayley, J., observed, that it might admit of some doubt, whether an assign was within a covenant, that the lessee, his executors or administrators, would not assign). If an assignment were made without license, and the lessor waived the forfeiture, the condition restraining "assigns" might apply. And in the case, too, in which there is a restriction on assignment, except to particular persons, the restriction should certainly extend to the assigns, so as to prevent any further assignment. For in *Whichcot* v. *Fox*, (Cro. Jac. 398), the condition being, that the lessee should not assign except to certain persons, it was held, that this was no restriction on one of those licensed assigns. But where the condition was, that neither the lessee, nor his executors or assigns, should assign except to particular persons, it was held, that one of these licensed assigns could not assign to another person. (*Anon.* Dy. 152 a; *Thornhill* v. *King*, Cro. Eliz. 757; see too *Lloyd* v. *Crispe*, 5 Taunt. 249).

Whether a bequest is a breach of a condition not to assign.

In *Berry* v. *Taunton*, (Cro. Eliz. 331), and *Dumper* v. *Syms*, (Id. 815), it was held, that a bequest of the lease was a breach of the condition not to assign, although the same principle certainly would not now be applied to the decision of the case of *Berry* v. *Taunton*, for there the condition was not to *demise*. And in *Fox* v. *Swann*, (Sty. 433), it was held, that a condition restraining assignment was not broken by a bequest. In the absence of a bequest, of course the term vests in the executor as assets, but it seems, that an express bequest to him even as executor, would be a breach of the condition. (Cro. Eliz. 816; *Barton* v. *Horton*, 1 Roll. Abr. 428, pl. 1). It is presumed, that a term which would be forfeited by a bequest would be held not to pass under a general bequest.

A license for one assignment dispenses with the condition altogether.

It will be sufficient in this place to advert but briefly to a doctrine connected with the subject, but which will be more fully discussed in another place. (See post, Vol. 5, Art. Defeasance). It is this, that a condition dispensed with in part, is dispensed with altogether; and therefore, where there is a lease with a proviso for re-entry on assignment without license of the lessor, or with a covenant not to assign without a license of the lessor, and a proviso for re-entry on a breach of covenant, and an assignment is once made with license, the condition is altogether determined. (*Dumper's case*, 4 Co. Rep. 119; S. C. nom. *Dumper* v. *Syms*, Cro. Eliz. 815; *Crusoe* d. *Blencowe* v. *Bugby*, 3 Wils. 234; *Lloyd* v. *Crispe*, 5 Taunt. 249). So, too, an

OF A FARM.

cut, stubbed, destroyed or spoiled, or wilfully damaged as aforesaid, and so in proportion for any greater or less

---

assignment with license of part of the land, determines the condition as to the residue, (4 Co. Rep. 120); or if the lease be to three persons, with a condition that they or any of them shall not alien without license, and one of them alien with license, the condition as to the other two is gone. (*Crompton* v. *Leeds*, 1 Roll. Abr. 472; S. C. cited nom. *Lylds* v. *Crompton*, Cro. Eliz. 816).

The rule is the same in equity as at law. (*Brummell* v. *Macpherson*, 14 Ves. 175; *Macher* v. *The Foundling Hospital*, 1 Ves. & Bea. 188, 191).

But the principle only applies to the condition; if the restriction be by covenant extending to the assigns, the landlord's right of action on the covenant would remain after an assignment with license.

As to the kind of license required, and waiver of the forfeiture.

If the license to assign be required to be by writing, a parol license is of course insufficient; (*Roe* d. *Gregson* v. *Harrison*, 2 T. R. 425); but a court of equity would relieve, if such parol license were given with the fraudulent intention of inducing the lessee to commit a forfeiture. (*Richardson* v. *Evans*, 3 Madd. 218). But acceptance of rent by the lessor, after having knowledge of the breach of the condition, is a waiver of the forfeiture then incurred. (*Whichcot* v. *Fox*, Cro. Jac. 398; *Goodright* d. *Walters* v. *Davids*, Cowp. 803; *Doe* d. *Boscawen* v. *Bliss*, 4 Taunt. 735; see however *Marsh* v. *Curteys*, Cro. Eliz. 528). But of course, acceptance of rent after a breach of the condition does not bar the lessor's right of re-entry, unless he was aware of the breach at the time of such acceptance. (*Harvey* v. *Oswald*, Cro. Eliz. 553; S. C. nom. *Harvey* v. *Oswel*, Id. 553; *Roe* d. *Gregson* v. *Harrison*, ubi supra). Nor does a waiver of the forfeiture occasioned by a breach of a condition not to underlet, preclude the landlord from entering for another breach by a subsequent underletting. (*Doe* d. *Boscawen* v. *Bliss*, 4 Taunt. 735).

After the lessor has given a license, its efficacy is not impaired by his death, (Co. Litt. 52. b.), or by his parting with the reversion before the assignment be made. (*Walker* v. *Ballamie*, Cro. Jac. 102).

Construction of condition for re-entry on assignment without license.

The power of assignment is not restrained by the mere omission in the lease of the word "assigns," (15 Ves. 264), but a condition of re-entry or forfeiture is created by any words, however informal, which indicate that such was the intention of the parties. (*Simpson* v. *Titterell*, Cro. Eliz. 242; *Whichcot* v. *Fox*, Cro. Jac. 398; see too *Thomas* v. *Ward*, Cro. Eliz. 202; *Archdeacon* v. *Jennor*, Cro. Eliz. 604; *Doe* d. *Henniker* v. *Watt*, 8 B. & C. 308; S. C. 1 Man. & Ry. 694). Conditions, however, of this nature are construed with great strictness; for where a lease contained several covenants on the

quantity of timber or wood, or greater number than one tree, (except such rough wood, bushes and thorns, for repairing the said messuage and buildings, gates, posts, pales, rails, stiles, hedges, and fences of the said demised premises, as may be first set out and allowed as aforesaid), and shall not, at any time during the continuance of the said term, lay any corn or other weighty or prejudicial thing in the said house, so as to damage any part thereof; AND SHALL NOT, during the said term, plough up or convert into tillage any part of the said meadow or pasture land, or plough, sow, use, or manage any of the said arable lands, or dig or break up for brick earth, or any other purpose whatsoever, any part of the demised premises, contrary to the covenants herein contained, without being subject to the further yearly rent or yearly rents hereinbefore reserved (*i*); AND SHALL NOT mow any of the natural grass, or meadow or pasture lands, for two years successively, nor more than one-third of the said pasture lands, and an equal moiety of the artificial grasses in the eighth year of the said term; AND THAT it shall be lawful for the said A. B. and his assigns to lay and stack upon the said premises all such hay, wood, and coals, as he or they shall think proper, after the —— day of —— in the eighth year of the said term, without injury to the tenant, and to fence in the same during the remainder of the said term: AND THAT the several and respective additional or increased rents, hereinbefore reserved, shall be recovered on their becoming due as aforesaid, in the same manner as the hereinbefore reserved rent of £—— may be recovered, and no receipt for rent shall be a discharge for

—and will not plough pasture land, nor use the lands contrary to covenant;

—and will not mow more than a specified quantity of grass;

—and that lessor may stack hay, &c., on the premises for a certain time before the end of the term;

—and that the increased rents shall be subject to certain conditions;

---

part of the lessee, including a covenant not to assign without license, followed by a proviso for re-entry, on breach "of all or any of the covenants *hereinafter* contained on the part of the lessee;" and there were no subsequent covenants on the part of the lessee, the court decided, that "hereinafter" could not be held to mean "hereinbefore," although the meaning was evident. (*Doe* d. *Spencer* v. *Godwin*, 4 Mau. & Sel. 265).

(*i*) The utility and propriety of this covenant are doubtful. (See supra, p. 49, n. (*d*).

OF A FARM.

the said increased rent or rents, or for any of the penalties, forfeitures, or sums of money before mentioned, which may happen to be incurred or become payable by the said C. D., his executors, administrators, or assigns, at any time or times before the giving of such receipt for rent, unless such increased rents, penalties, or forfeitures shall be therein expressly mentioned, and appear thereby to be fully satisfied; AND ALSO SHALL and will permit and suffer the said A. B. and his assigns, at any time or times during the said term to take any quantity of the land hereby demised, for the purpose of making exchanges for the convenience of occupation, and also to take any quantity of the lands into his or their own occupation, for the purpose of planting, building, or otherwise, not exceeding thirty acres, being allowed such deduction and abatement from the rent hereby reserved as shall be determined by three indifferent persons, in the same manner as the turnips and hay left upon the premises in the last year of the term are herein agreed to be valued and paid for by the said A. B. or his assigns; AND SHALL and will from time to time, kill, destroy, and effectually keep down the rabbits upon the said farm, by ferreting and trapping them underground, but not by setting traps above-ground, so as to prevent the numbers of such rabbits increasing, or impeding the good management of the said farm, or injuring the crops and fences thereon; and shall and will, if thereunto required by the said A. B. or his assigns, from time to time use and lend his and their best endeavours and assistance to kill and destroy the rabbits, in manner aforesaid, in the plantations, in, upon, or next adjoining to the said farm; AND IN CASE the said C. D., his executors, administrators, or assigns, shall neglect or omit to kill and keep down the rabbits upon the said farm, it shall be lawful for the said A. B. and his assigns (ten days' notice in writing for that purpose being first given to or left for the said C. D., his executors, administrators, or assigns, at or upon the said premises) to appoint any person or persons to take such steps as he or they shall think fit for killing and reducing the said rabbits to such numbers as shall be consistent with the good management of the said farm; AND WHEREAS there

—and that lessor, during term, may resume land for the purpose of exchanging, planting, or building;

—and that lessee will keep down rabbits;

—and that, on default, lessor may kill them.

Recital of the

OF A FARM.

exists an ancient stock or cattle fair, called —— Fair, which was held upon part of a farm in the said county of ——, (being other part of the estates comprised in the said indenture of the —— day of ——), formerly in the occupation of ——, and now of ——, to which the tenants of the estates comprised in the said indenture used to resort, and send their stock and cattle at stated seasons for the purposes of sale, and in respect of which fair stated tolls and profits arose to the owner of the lands upon which the said fair was held, or his tenants, but the said fair has of late years been neglected, and the business there transacted has been carried on elsewhere, and it is expedient that such fair should, for the future, be held regularly as the same was originally held, and upon the same site as heretofore; and it is intended by the said A. B., that the tenants generally upon the estates comprised in the said indenture of the —— day of —— shall enter into the like agreement as is hereinafter contained on the part of the said C. D. with respect to the using and frequenting of the said fair (*j*): NOW THIS INDENTURE ALSO WITNESSETH, and the said C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, and assigns, shall and will from time to time, during the continuance of the said term hereby granted, and at the proper and usual seasons, use his and their best endeavours to restore the fair so as aforesaid formerly held upon the said farm, now in the occupation of the said ——, and for that purpose shall and will send all such cattle, sheep, and stock, as he the said C. D., his executors, administrators, or assigns,

nonuser of an ancient cattle fair on part of the lessor's estate, and of his intention to revive it.

Witnesseth, further, covenant by lessee to use the fair.

(*j*) To introduce recitals after one of the operative parts of a deed is contrary to the general principles and practice of conveyancing. But it is allowed in some instances like that in the text, where the subject-matter of the recital, and its subsequent operative part, are wholly distinct from the preceding matters, and especially where the principal matter of the deed requires no recital. It may, however, be doubted, whether any such advantage is gained by the practice as to counterbalance the evil of departing from the general rule.

OF A FARM.

shall or may have for sale, or wish to dispose of, at those seasons, to the fair intended to be held as heretofore upon the lands in the occupation of the said ——, and not to any other or similar fair which may be held upon neighbouring or adjoining lands belonging to any other proprietor than the said A. B., and shall and will pay the customary tolls, rates, or dues heretofore or usually claimed and paid in respect of the frequenting or using —— Fair to the said [*tenant of the Fair farm*], or his successors in his said farm, or the person or persons from time to time appointed by him or them to collect and receive the same, or, in case the same farm shall for the time being be untenanted, to the owner or owners thereof for the time being, or to the person or persons appointed by such owner or owners to collect and receive the same: PROVIDED ALWAYS, that if the rent or rents hereinbefore reserved, or any of them, or any part thereof respectively, shall be unpaid for twenty days next after any of the said days of payment (the same being lawfully demanded upon or at any time before or after such twenty days, and not paid on such demand made) (*k*), or if breach shall be made in any of the covenants, conditions, or agreements in these presents (*l*) contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed or performed, or if the said C. D., his executors, administrators, or assigns, shall, at any time or times during the said term hereby granted, suffer a judgment to be obtained against him or them in any of her Majesty's Courts of

Proviso for re-entry.

(*k*) If a condition of re-entry be reserved for non-payment of rent generally, or on "the same being lawfully demanded," the lessor must observe a number of minute and tedious forms with the utmost exactness before he can re-enter; (1 Wms. Saund. 287, n. (16)); and though the qualification in the text somewhat facilitates the proceeding, it is much better to give the power of re-entry on non-payment of the rent, "whether the same shall have been lawfully demanded or not." No injury is done to the lessee, as equity always relieves against a re-entry for non-payment of rent, on payment of arrears with interest. (*Wadman* v. *Calcraft*, 10 Ves. 67).

(*l*) See the case of *Doe* d. *Spencer* v. *Godwin*, 3 Mau. & Sel. 265, cited supra, p. 65, n. (*h*).

Record, and not pay the debt and costs recovered, or if any fiat in bankruptcy shall issue against him or them, or if he or they shall become insolvent or unable to stock and manage and carry on the said farm and premises, or shall leave his or their place of abode and abscond for the space of one calendar month, or in case this present lease or the term of years hereby granted shall be assigned or assignable, at law or in equity, for or by reason of any insolvency or bankruptcy of the said C. D., his executors, administrators, or assigns, then it shall be lawful for the said A. B. and his assigns into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same premises to have again as in his or their former estate, and from thenceforth the said term hereby granted shall absolutely cease and determine: AND THE SAID A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B. and his assigns shall and will, within three calendar months next ensuing, at his and their own costs and charges, erect and build upon the same premises one long open bullock-shed, and also make and put down a new floor to the house-barn, and put up new posts to the door of the same barn: AND SHALL and will, when necessary, set out and provide sufficient rough wood, bricks, lime, and fencing stuff, for repairing the said messuage or farm-house and buildings, and the gates, posts, pales, and rails, stiles, hedges, and fences, upon the said demised premises, (except gate-irons): AND SHALL allow the said C. D., his executors, administrators, or assigns, for his and their firing to be consumed and burnt on the premises, the bushes, thorns, and roots which shall arise from the said premises when the ditches shall be cut and scoured as hereinbefore mentioned, except such as shall be necessary for making a good hedge there, and repairing other fences belonging to the premises: AND ALSO, THAT it shall be lawful for the said C. D., his executors, administrators, or assigns, at all times during the said term, in an husband-like manner to dig and take away any quantity of clay and marl to be used upon the demised premises, out

Covenants by the lessor to erect certain buildings, &c.;

—and to find materials for lessee's repairs;

—and to allow bushes, &c., for firing;

—and that lessee may dig clay and marl, for use on the premises;

OF A FARM.

of or from such part or parts of the said premises as the said A. B. or his assigns, or his or their steward or agent, shall set out, and not elsewhere: AND THAT, in case the said messuage and tenement and other buildings hereby demised, or any part hereof, shall at any time during the said term be burnt down, destroyed, or damaged by fire, he the said A. B. or his assigns shall and will, at his and their own costs and charges, within six calendar months, or as soon after as conveniently may be, rebuild or well and sufficiently repair the same: AND THAT it shall be lawful for the said C. D., his executors, administrators, or assigns, paying the said yearly rents, and observing and performing all the covenants in these presents contained on his and their parts to be observed and performed, quietly to hold all the lands and other hereditaments hereby demised, or expressed and intended so to be, during the said term determinable as aforesaid, and the barns and stack-yards, until the —— day of —— next after the expiration thereof, in case the said A. B. shall so long live, for the laying, threshing, and dressing his and their last year's crops: AND THAT he the said A. B. or his assigns, or his or their next incoming tenant, shall and will, when thereunto required by the said C. D., his executors, administrators, or assigns, and at seasonable and proper times, find and provide, gratis, a sufficient number of waggons, horses, and drivers, for the purpose of carrying or removing into the barns of the said premises, all the crops of corn, grain, or pulse, which shall grow on the said premises in the last year of the said term hereby granted, and shall pay and allow to the said C. D., his executors, administrators, or assigns, for the threshing and dressing of the said last year's crop, at the usual rate paid for the same in the neighbourhood of ——, in the said county, and shall carry out and deliver the same in quantities of not less than twenty coombs at a time to any place not exceeding the distance of —— from the said demised premises, and bring back the empty sacks, the said C. D., his executors, administrators, or assigns, paying the tolls at the turnpike-gates, and for unloading the same corn or grain: AND ALSO

—and that, in case of fire, lessor will rebuild in six months;

—and for quiet enjoyment, until a certain day after the end of the term, for the purpose of threshing, &c., the last year's crops;

—and that lessor will do certain acts for facilitating the disposal of such crops;

—and allow

OF A FARM.

SHALL, at the end of the said term, allow the said C. D., his executors, administrators, or assigns, for the turnips and mangel-wurzel, and for the last year's hay, and for the feed of the new layers to be left as hereinbefore mentioned at the end of the said term, such sum of money as the same shall be valued at, between the —— and —— days of —— in the said last year, by two or three indifferent persons, (one to be chosen by the said A. B., his executors, administrators, or assigns, one by the said C. D., his executors, administrators, or assigns, and the third by the two persons so to be first chosen), or any two of them, such third person to be chosen prior to such two persons entering on their valuation. IN WITNESS &c.

the lessee the value of turnips, &c., left on the farm to be fixed by a valuation.

THE SCHEDULE referred to in the above-written Indenture.

V.

UNDER A POWER.

LEASE *under a* POWER *of* LEASING *in a* SETTLEMENT (*a*). EXCEPTIONS, RESERVATIONS, *and* COVENANTS, *as in the last Precedent*, mutatis mutandis.

THIS INDENTURE, made &c. BETWEEN A. B. of &c. and C. D. of &c. [*donees of a power of leasing in a settle-*

Parties.

(*a*) The learning with regard to leases under powers is exceedingly voluminous and abstruse; and as it would be impossible, within the limits of the present work, to give any adequate view of the matter, the editor contents himself with referring to the works of Sir Edward Sugden, and Mr. Chance. See, particularly, 2 Sugd. Pow. ch. xvii.; Chance on Powers, ch. xvii. It is not usual in leases under powers to recite the power, or to notice the instrument by which it was created; a mere general reference, as in the case in the text, is deemed sufficient. Of course, however, there is no objection to recitals, if they are thought likely to be serviceable; and if the lessee pays a premium for the lease, or means to lay out money in building,

Leases under powers.

UNDER A POWER.

ment] of the first part; E. F., of &c., [*tenant for life under the settlement*], of the second part; and G. H., of &c., [*lessee*], of the third part; WITNESSETH, that, in consideration of the yearly rent hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained, and on the part of the said G. H., his executors, administrators, or assigns, to be observed and performed; AND pursuant to, and by force and virtue, and in exercise and execution of the power or authority to them for this purpose given by an indenture of release, bearing date the —— day of ——, grounded on a lease for a year, and made or expressed to be made between [*parties*], being the settlement made in pursuance of the directions contained in the will of ——, and in obedience to several orders made by the High Court of Chancery in several causes in the said indenture of release mentioned, they the said A. B. and C. D., with the consent of the said E. F. given by these presents, do by this present indenture, sealed and delivered by them in the presence of and attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses to the sealing and delivery of these presents by the said A. B. and C. D., limit and appoint by way of demise or lease unto the said E. F., his executors, administrators, and assigns: ALL THAT &c., [*parcels described by reference to schedule, see supra, p. 44*] TOGETHER WITH &c. [*general words, supra, p. 44*], EXCEPT AND RESERVED out of this present limitation and appointment, all brick earth, clay, and clay-pits, fish, fish-ponds, timber, and all other trees, wood, underwood, willows, alders, sallows, thorns, and bushes, which, during the term hereby granted, shall be in or upon the said premises, WITH LIBERTY of ingress, egress, and regress to and for

Witnesseth. Consideration.

Appointment by way of demise.

Parcels.

Exception and reservation of clay, fish, trees and bushes;

—with rights of entry for

---

mining, or the like, he will be very imprudent to take his lease without at least inspecting the instrument creating the power, even if he waive the production of the entire title of the lessor. (See supra, p. 16, n. (*c.*)). It is hardly necessary to caution the draftsman, that, whether the power be or be not recited, the terms and language of it should be precisely followed, as well as the material requisitions complied with.

the person or persons who, under the limitations of the said indenture of the —— day of —— [*the settlement*], shall, for the time being, be entitled to the premises by virtue of this present exception and reservation not comprised in the limitation and appointment by way of demise hereby made as aforesaid, to enter upon the said demised premises, and to dig, cut, fell, top, stub up, convert, and carry away the said excepted brick earth, clay, fish, timber, and other trees, woods, underwoods, alders, willows, sallows, thorns and bushes, and to plant all sorts of trees in the several banks or hedge-rows of the said premises, and to view the condition thereof, and to bring materials thereon, and to repair or renew the same: AND FOR the person or persons for the time being entitled, under the limitations of the said indenture of the —— day of ——, to the reversion expectant on the term intended to be hereby limited, and his and their assigns, at all reasonable times to enter into and upon the said demised premises, and to view the condition thereof, and to bring materials thereon, and repair and renew the banks and the hedge-rows thereof, and to plant all sorts of trees and bushes in the said several banks and hedge-rows, and for all other purposes: AND ALSO FOR the person or persons for the time being entitled as aforesaid, and his and their lessees, assigns, friends, companions, and game-keepers, agents, and servants, at all seasonable times in the year, to hawk, hunt, shoot, course, fish, fowl, and sport, in, over, and upon the said premises, and for all other reasonable purposes: TO HAVE AND TO HOLD the said messuage or tenement, farm, lands, and hereditaments, and all and singular other the premises hereinbefore limited and appointed, or expressed and intended so to be, unto the said G. H., his executors, administrators, and assigns, from the —— day of ——, for the term of —— years from thence next ensuing and fully to be complete and ended, YIELDING AND PAYING therefore yearly and every year, the yearly rent or sum of £ —— (*b*) clear of all taxes, rates,

UNDER A POWER.

cutting timber, &c.

—and for planting;

—and for inspection and reparation;

—and for sporting and other purposes.

Habendum for a term.

Reddendum of a certain yearly rent;

(*b*) Rent, even if reserved to the wrong person, will in most cases follow the reversion; (*Darrell* v. *Wilson*, Cro. Eliz. 645; *Sacheverell*

Method of reserving rent

UNDER A POWER.

assessments, and deductions, except land-tax, by equal quarterly payments, upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day ——, in every year, the first payment thereof to be made on the —— day of —— now next ensuing, and the last payment thereof to be made on the —— day of ——, next preceding the end of the said term: AND ALSO YIELDING AND PAYING &c. [*additional rents for converting pasture land into arable, and for misusing arable land, supra, p. 47*]: AND the said G. H. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B. and C. D., their heirs and assigns, and also as a separate covenant with other the person or persons who, under the limitations of the said indenture of the —— day

—of additional contingent rents.

Covenants by lessee;

---

when the lessor is seised or possessed only for a partial estate.

v. *Froggatt*, 2 Saund. 367; Co. Litt. 213. b., n. (1); ante, Vol. 1, tit. LEASES); and it is well settled, that rent reserved in a lease under a power to "the said (*donee*), his heirs and assigns, and such person and persons to whom" the hereditaments, after the donee's death, should belong; or to the donee and his heirs simply, will follow the reversion. (*Whitlock's case*, 8 Rep. 69 b; S. C. 1 Brownl. 169; *Hotley* v. *Scott*, Lofft, 316; S. C. nom. *Lord Tankerville* v. *Wingfield*, 2 Brod. & Bing. 498; *Campbell* v. *Leach*, Amb. 740; see, too, 2 Chance on Powers, 316).

In a recent case, lands were settled to the use of trustees for 1,000 years, and subject to the term to a person for life, with remainder to trustees for 2,000 years, and subject thereto to such uses as A. should appoint, and in default of appointment, to him for life, with remainder to his children in tail, with remainders over, and a power was given to the first tenant for life to demise for seven years from her death; and the tenant for life made a lease under the power, reserving rent "to A., or the person for the time being entitled to the *freehold or inheritance* of the premises, immediately expectant on the death of" the tenant for life; and it was held, that an assignee of the term of 1,000 years was the reversioner entitled to the rent reserved by the lease, and might distrain for it. (*Rogers* v. *Humphreys*, 4 Ad. & Ell. 299; S. C. 5 Nev. & Man. 511). But in *Whitlock's case*, it was said, and the recommendation should always be acted on in practice, "that the most clear and sure way is, to reserve rent yearly during the term, and leave the law to make distribution, without an express reservation to any one." This observation of course applies, not merely to leases under powers, but to all cases in which the lessor is seised or possessed for a partial estate of the property to be demised.

of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the term hereby created (*e*) in manner

UNDER A POWER.

(*c*) If a tenant for life, with a power of leasing, make a lease by virtue of his power, and the lessee enter into covenants (of such nature as run with the land) with the tenant for life, his heirs and assigns, the benefit of those covenants will enure to the remainder-man, as an assignee of the reversion, under the statute 32 Hen. 8, c. 28, so as to enable him to sue upon them in his own name as assignee. (*Isherwood* v. *Oldknow*, 3 Mau. & Sel. 382; see too *Whitfield* v. *How*, 1 Vent. 238; S. C. Sir T. Jones, 110). In the case in the text, the trustees A. B. and C. D. had the legal estate as well as the power of leasing, and therefore the lessee properly enters into his covenants with them, their heirs and assigns. It may, however, be doubted, whether the covenant should not be with the donees of the power and their assigns, for the remainder-men are not the heirs, but only the assigns of the covenantees. The propriety of the latter part of the covenant too is very disputable; for a person not named in a deed cannot recover upon it, (*Green* v. *Horne*, 1 Salk. 197), and no person can recover upon an indenture which is made between parties, unless he be either a party to it himself, or claim through a party. (*Scudamore* v. *Vandenstene*, 2 Inst. 673; 2 Roll. Abr. 22; *Faits*, F. (1.); *Clements* v. *Henley*, Id. (2.); *Berkeley* v. *Harvey*, 5 B. & C. 355; *Lord Southampton* v. *Brown*, 6 B. & C. 718; *Gardner* v. *Lachlan*, 8 Sim. 123). And therefore, even if the persons described as reversioners could be considered to be sufficiently named by the description, yet they could not sue on the covenants, as not being parties, or claiming through parties to the deed, except as assignees under the statute, and then they could sue by virtue of their statutable right, and not as covenantees in their own right under the deed.

With whom the lessee should covenant in leases under powers.

In a modern case, a tenant for life, with a power of leasing, and a receiver appointed by the Court of Chancery, granted a lease, and the lessee covenanted "to and with the said [*receiver*], and other the receiver or receivers for the time being, and to and with such other person or persons as for the time being should or might be entitled to the freehold or inheritance, or to the rents and profits of the said premises, and to and with every of them;" and the tenant for life died, and an action was brought by his executrix against the lessee, for breaches of covenant committed in the lifetime of the tenant for life; but the Court held, that the covenant was joint, and that the receiver ought to have joined in the action. (*Southcote* v. *Hoare*, 3 Taunt. 87).

The converse case, viz. whether the remainder-man would be bound by the covenants of the tenant for life, donee of the power,

Whether remainder-man

UNDER A POWER.

and form following (that is to say): THAT he the said G. H., his executors, administrators, or assigns, shall and will &c., [*covenants to pay rent (see infra, Precedent IX.) and taxes—inhabit the house—and repair and maintain, supra, p.* 51], (EXCEPT such of the repairs and amendments mentioned in the schedule hereunder written as shall be done by the said E. F. in pursuance of the covenant hereinafter on his part contained), when, where, and as often as need or occasion shall be or require, and whether particularly required by notice or not: THEY THE SAID A. B. and C. D., their heirs and assigns, and other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the term hereby created, upon reasonable request and timely notice to them in writing as hereinafter mentioned, providing and allowing on the said premises, or within —— miles distant therefrom, sufficient rough timber, bricks, tiles, lime, and iron, for such repairs; all such timber and materials, as well for repairs as for the erection of any such new buildings as aforesaid, to be cut and carried respectively at the tenant's expense (damage by fire or tempest happening to any of the said buildings always excepted out of this present covenant to repair): AND SHALL and will from time to time, during the said term, repair, maintain, preserve, and keep in good order all plantation fences in or upon the said lands hereby limited and appointed, or in or upon any lands next adjoining thereto, the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, paying a moiety of the expense of first putting such plantation fences into good order and repair, and afterwards allowing stakes and braiding, or fencing thorns and white thorn layer when necessary,

—(amongst others,) for repairs;

—except as to certain repairs to be done by the tenant for life;

—the lessors finding materials;

—and to repair adjoining plantation fences;

---

is bound by the covenants of a donee of a power of leasing.

does not appear to have been expressly decided, but it seems probable that he would be held to be so bound. (*Goodtitle* v. *Funucan*, 2 Doug. 565, 572; see too *Hurd* v. *Fletcher*, 1 Doug. 43; *Evans* v. *Vaughan*, 4 B. & C. 261; S. C. 2 Dow. & Ry. 349; 2 Chance on Powers, 225).

UNDER A POWER.

towards the future repair of the said fences, but without making any other allowance or any remuneration in respect of the same: AND ALL AND SINGULAR the said premises, being so well and sufficiently repaired, supported, maintained, and amended, emptied, scoured, cleansed, and kept, shall and will, at the end or other sooner determination of the said term, peaceably yield, surrender, and give up, together with any new buildings or erections thereon, and all such fixtures as are in any way affixed or fastened to the freehold of the said premises, and as between landlord and tenant are usually considered the property of the landlord, unto the said A. B. and C. D., their heirs and assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the said term hereby created (timber and materials being allowed as hereinbefore and hereinafter mentioned, and damage by fire or tempest happening to any of the said buildings always excepted): AND THAT it shall be lawful for the said A. B. and C. D., their heirs and assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the said term hereby created, and their or his agents, servants, or workmen, twice or oftener in every year during the said term, to enter and come into and upon the said premises, or any part thereof, there to view, search, and see the state and condition of the same, and of all defaults, decays, or wants of reparation then and there found to give or leave notice in writing, for the said G. H., his executors, administrators, or assigns, to repair and amend the same within three calendar months from the day of such notice, within which said time, he the said G. H., his executors, administrators, or assigns, shall and will repair and amend the same accordingly: AND ALSO, THAT it shall be lawful for the said A. B. and C. D., their heirs and assigns, or other the person or persons entitled as aforesaid, in case he or they shall be desirous so to do, at

—and to yield up the premises in good repair at the end of the term;

—and that lessors may enter to inspect condition of premises;

—and that lessee, on notice, will repair;

—and that lessor may remove and build cottages;

UNDER A POWER.

any time or times during the said term, to remove any cottage or cottages now standing and being upon the said farm, or to pull down and alter the site or position of any cottage or cottages on the said farm, and to build any other cottage or cottages in lieu thereof, in or upon such other part or parts of the said farm as he or they may think fit: AND FURTHER, THAT he the said G. H., his executors, administrators, or assigns, shall yearly perform —— days' carriage work with a waggon and team of horses, for the carriage of coals to —— Hall aforesaid, or otherwise for the use of the said A. B. and C. D., their heirs and assigns, or other the person and persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the term hereby created, not exceeding the distance of —— miles from ——: AND SHALL supply to and for the use of, and deliver at the said Hall once in every year during the said term, —— waggon loads of good wheat-straw, without being paid or receiving any remuneration for the same (*d*): AND SHALL, yearly during the said term, cause not less than one-sixteenth part of the fences belonging to the said premises hereby appointed to be properly cut and scoured, and ditches made thereto four feet and a half wide at the top, one foot wide at the bottom, and three feet and a half deep perpendicularly, and plant white thorn layers in the vacant places, when and where the said A. B. and C. D., their heirs or assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the said term hereby created, or their or his agent, shall appoint, and in default of such appointment, when and where most necessary, and weed the same twice in each year during the first three years after planting the same, and preserve the same from damage by sheep or cattle, and in all other respects; and shall not pare off the back of the

—and that lessee will do carriage work for lessors;

—and supply a certain quantity of straw at the mansion-house, comprised in the settlement;

—and manage the fences in a specified manner;

(*d*) See supra, p. 55, n. (*g*).

UNDER A POWER.

fences, or cut away the banks, or remove the soil from any of the fences upon the said farm, without the license in writing of the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, first obtained; and shall not injure the roots of any of the trees growing or being in any of the said fences or banks, but shall and will, where any of the said lands shall be ploughed, leave at least a yard and a quarter unploughed or unconverted into tillage from the stub of the layer or quickset backs of the fences upon the said farm, and shall not nor will cut any of the thorns growing in the said fences on the back side thereof, but shall and will, when occasion requires, for the stopping of gaps or any other reasonable purpose, cut such thorns from the brow of the fences, under penalty of paying to the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, 10*s.* per rod for every rod of fencing which shall be managed contrary to the stipulations hereinbefore contained; and shall and will, when thereunto required by the said A. B. and C. D., or their heirs or assigns, or other the person or persons entitled as aforesaid, raise and make any new fence or fences in or upon any part of the said lands hereby limited and appointed, in the place of any old fences which the said A. B. and C. D., or their heirs or assigns, or other the person or persons entitled as aforesaid, may require to have levelled, or the white thorn layer of which may be decayed or worn out, the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, supplying the necessary white thorn layer and young trees, if any, that may be required to be planted, and contributing one-half the other expenses of raising and making such new fences as aforesaid, and shall clip with shears in a proper manner twice in every year such hedges as have been usually cut or clipped: AND SHALL preserve all the young trees, layers, quicksets, shoots, and saplings from oak, ash, elm, or other stubs of trees which have heretofore been felled, and all fences now, or at any time during the term hereby created, standing, growing, or being upon the said premises, or any part thereof, from being injured by cattle

—and preserve the young trees;

UNDER A POWER.

or sheep: AND SHALL NOT fell, lop, or top any pollards, and shall also cut open and spread, when required or necessary, all the ant-hills and mole-hills which shall be upon the said premises hereby limited and appointed, and destroy the rats and mice, ants and moles, upon the said premises: AND SHALL and will, yearly during the said term, as often as necessary, mow and destroy the rushes, nettles, and other weeds growing upon the pasture lands or any other part of the said farm; and also weeds in the fences belonging thereto, to prevent the weeds seeding or growing thereon: AND FURTHER, THAT he the said G. H., his executors, administrators, and assigns, shall and will warn off all persons who during the said term shall hunt, hawk, fish, or sport upon the said premises, without the license or consent of the said A. B. and C. D., or their heirs or assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the said term hereby created: AND THAT he the said G. H., his executors, administrators, or assigns, shall and will give to the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, immediate notice of any person, who shall hunt, hawk, fish, or sport upon the said premises; and that it shall be lawful for the said A. B. and C. D., their heirs or assigns, or other the person or persons so entitled as aforesaid, in case any person or persons shall, during the said term, hunt, hawk, fish, or sport upon the said premises hereby limited and appointed, to bring any action or suit and prosecute the same at law, or otherwise proceed against such person or persons in the name or names of the said G. H., his executors, administrators, or assigns; and that he or they shall not release or discharge any such action or suit without the consent in writing of the said A. B. and C. D., their heirs or assigns, or other the person or persons entitled as aforesaid, provided that the said G. H., his executors, administrators, or assigns, shall be indemnified from the costs thereof: AND ALSO, THAT he the said G. H., his executors, administrators, or assigns, shall and will at all times during

—and not cut pollards and destroy ant-hills, &c.;

—and destroy the weeds in the fences and elsewhere;

—and warn off sportsmen;

—and give notice of sportsmen trespassing to the lessors, who may bring actions in lessee's name;

—and for the management of the farm in a

UNDER A POWER.

the said term, use and manage all the said arable lands, and at the end thereof yield and deliver up the same to the said A. B. and C. D., their heirs and assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the said term hereby created, in four equal shifts or divisions, according to the four-course system of cropping and husbandry practised in the county of ——, as nearly as the size of the several closes will admit, (that is to say), [*see the covenants supra, pp. 57—66, substituting for* " A. B., his executors, administrators, or assigns,"—" A. B. and C. D., their heirs and assigns, or other the person or persons entitled as aforesaid."] *Proviso for re-entry, supra, p.* 68 *reserved to* " the said A. B. and C. D., their heirs or assigns, or other the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled, in reversion immediately expectant on the said term hereby created, to the hereditaments hereinbefore limited and appointed (*e*):" AND THE SAID A. B. and C. D., so far as relates to their own acts and deeds, do for themselves, their heirs, executors, and administrators, covenant with the said G. H., his executors, administrators, and assigns, and so far as they are able to contract for or bind the person or persons who, under the limitations of the said indenture of the —— day of ——, shall for the time being be entitled to the hereditaments hereby limited and appointed in reversion immediately expectant on the term hereby created (*f*), without entering into any covenant or obligation,

specified course of husbandry.

Proviso for re-entry.

Covenants by the trustees of the power;

(*e*) The power of re-entry in the text appears to be rightly reserved, except, perhaps, that the word "heirs" might be properly omitted. It is pretty clear, that the power of re-entry, even if reserved to the lessors, their heirs and assigns, would enure to the benefit of the remainder-men. (*Hotley* v. *Scott*, Lofft, 316; S. C. nom. *Lord Tankerville* v. *Wingfield*, 2 Bro. & Bing. 498; S. C. 7 Price, 343; 5 J. B. Moore, 346; 3 Bligh, 331; see, too, 2 Chance on Powers, 226, 316; and see supra, p. 73, n. (*b*), p. 75, n. (*c*).

Power of re-entry,—how it should be reserved.

(*f*) See *Goodtitle* v. *Funucan*, 2 Doug. 565, 572; 2 Chance on Powers, 225; and supra, p. 75 n. (*c*).

UNDER A POWER.

binding themselves, the said A. B. and C. D., their heirs, executors, or administrators, or any of them, otherwise than for their own acts and deeds as aforesaid, do hereby agree with the said G. H., his executors, administrators, and assigns, THAT they the said A. B. and C. D., their heirs and assigns, and other the person or persons for the time being entitled as aforesaid, shall and will at all times during the said term, when necessary, set out and provide sufficient rough wood, bricks, lime, and fencing stuff for repairing the said messuage or farm-house and buildings, and the gates, posts, pales, rails, stiles, hedges, and fences upon the said premises: AND SHALL allow the said G. H., his executors, administrators, and assigns, for his and their firing to be consumed and burnt on the premises, the bushes, thorns, and roots, which shall arise from the said premises when the ditches shall be cut and scoured as herein mentioned, except such as shall be necessary for making a good hedge there, and repairing other fences belonging to the premises; AND ALSO, THAT it shall be lawful for the said G. H., his executors, administrators, and assigns, at all times during the said term, in a husband-like manner, to dig and take away any quantity of clay and marl to be used upon the said premises, out of or from such part or parts of the said premises as the said A. B. and C. D., their heirs and assigns, or the person or persons for the time being entitled as aforesaid, or their or his steward or agent, shall set out, and not elsewhere; AND THAT it shall be lawful for the said G. H., his executors, administrators, and assigns, paying the said yearly rents, and observing and performing all the covenants in these presents contained, on his and their parts to be observed and performed, quietly to hold all the lands and other hereditaments hereby appointed, or expressed and intended so to be, during the said term, and the barns and stack yards, until the —— day of —— next after the end or expiration thereof, for the laying, threshing, and dressing his and their last year's crop (*g*): AND FURTHER,

—that they will find sufficient materials for lessee's repairs;

—and allow refuse hedgewood for firing;

—and allow lessee to dig clay and marl for farm purposes;

—and for quiet enjoyment, till an appointed day after the end of the term, for the purposes of the last year's crops;

—and do cer-

(*g*) Upon a demise "until Michaelmas next and no longer," with the privilege of using part of the premises for specific purposes till Lady-day following, ejectment may be brought for those parts to

UNDER A POWER.

THAT they the said A. B. and C. D., their heirs and assigns, and other the person or persons entitled as aforesaid, shall and will pay and allow to the said G. H., his executors or administrators, for the threshing and dressing the said last year's crop, at the usual rate paid for the same in the neighbourhood of ——; And shall carry out and deliver the same in quantities of not less than 20 coombs, at any place not exceeding the distance of —— miles from the said premises hereby appointed, and bring back the empty sacks, the said G. H., his executors, administrators, or assigns, paying the tolls at the turnpike gates, and for unloading the same: AND ALSO SHALL at the end of the term allow the said G. H., his executors, administrators, or assigns, for the turnips and mangel-wurzel, and for the last year's hay, and for the feed of the new layers to be left, as hereinbefore mentioned, at the end of the term hereby created, such sum of money as the same shall be valued at, between the —— and —— days of ——, in the said last year, by two or three indifferent persons, (one to be chosen by the said A. B. and C. D., their heirs and assigns, or the person or persons entitled as aforesaid, one by the said G. H., his executors, administrators, or assigns, and the third by the two persons so to be first chosen, or any two of them, such third person to be chosen prior to such two persons entering on their valuation; AND THE SAID E. F. doth hereby for himself, his heirs, executors, and administrators, covenant with the said G. H., his executors, administrators, and assigns, that he the said E. F., his executors and administrators, shall and will, at his or their own proper costs and charges, make and do or cause to be made and done, in a good and workman-like manner, and with good and proper materials of all sorts, the several works or repairs to the said messuage and buildings hereby limited and appointed as aforesaid, which are mentioned or particularized in the inventory or second schedule hereunto annexed, and that such several works

tain acts for facilitating the disposal of such crops;

—and allow the lessee for turnips, &c., remaining at the end of the term, to be estimated by a valuation.

Covenant by the tenant for life to do certain repairs.

which the privilege does not extend, in the interval between Michaelmas and Lady-day. (*Doe* d. *Waters* v. *Houghton*, 1 Man. & Ry. 208).

UNDER A POWER.

or repairs (which are estimated in the whole at the sum of £——) shall be made and done some time between the months of —— and ——, in the present year. IN WITNESS &c.

THE FIRST SCHEDULE referred to in the above-written indenture.

THE SECOND SCHEDULE referred to in the above-written indenture.

VI.

MANUFACTORY AND MACHINERY.

LEASE *of a Dwelling-house,* MANUFACTORY, *and* MACHINERY *as scheduled.* COVENANTS *to* PAINT *the* OUTSIDE *and* INSIDE *of the Premises at specified Times; and not to carry on* OFFENSIVE TRADES. LESSEE *to have the* OPTION *of* PURCHASING *the* INHERITANCE *at a* FIXED PRICE *and on certain Terms.*

Parties. THIS INDENTURE, made &c. BETWEEN A. B., of &c. [*lessor*], of the one part; and C. D. and E. F., of &c., silk manufacturers and co-partners, [*lessees*], of the other part: WITNESSETH, that, in consideration of the rent hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained and on the part of the said C. D. and E. F., their executors, administrators, and assigns, to be observed and performed, he the said A. B. hath demised, leased, and to farm letten, and by these presents doth demise, lease, and to farm let, unto the said C. D. and E. F., their executors, administrators, and assigns: ALL THAT &c., [*parcels—comprising a dwelling-house with lawn, garden, stable, and out-buildings, cottages for workmen, and a factory with a foreman's house, and several shops and buildings thereto belonging*], ALL which

Witnesseth. Consideration.

Demise.

Parcels.

MANUFACTORY AND MACHINERY.

said premises hereinbefore demised, or expressed and intended so to be, are delineated in the plan or ground plot thereof drawn in the margin of these presents, TOGETHER WITH [*general words, supra, p.* 44]; TOGETHER ALSO WITH the two steam-engines and the machinery thereto belonging, warming and steam pipes, gas apparatus, gas pipes, gas burners, and the several fixtures, articles, and things mentioned and comprised in the schedule hereunder written (*a*): TO HAVE AND TO HOLD the said messuages,

General words.

Steam engines, machinery, and fixtures.

Habendum.

(*a*) It will, perhaps, be convenient to state the leading points of the law relating to fixtures, as between landlord and tenant, with a view to preparing the covenants relating to fixtures. They are defined as "those personal chattels which have been annexed to the land, and which may be afterwards severed and removed by the party who has annexed them, against the will of the owner of the freehold;" (Amos & Ferard, Law of Fixtures, p. 2); but they may be more simply and popularly described as personal chattels affixed to the freehold. (See Wms. Law of Executors, pt. 2, bk. 2, ch. 2, s. 3, *Fixtures*). The questions then arise, first, what are fixtures? and secondly, what fixtures belong to the tenant, and are removable by him, like other personal chattels; (*Davis* v. *Jones*, 2 B. & Ald. 165); and what are not so removable?

Law of fixtures between landlord and tenant.

A personal chattel, to become a fixture, must be let into or fastened to the ground, or to some wall or other thing previously let into or fastened to the ground. Thus, a veranda attached to posts fixed in the ground is a fixture. (*Penry* v. *Brown*, 2 Stark. N. P. C. 403). So, too, is a conservatory, the supports of which were let into the wall of a house; (*Buckland* v. *Butterfield*, 2 Brod. & Bing. 54); and a still set in brickwork; (*Horn* v. *Baker*, 9 East, 215; see, too, *Leach* v. *Thomas*, 7 Car. & Pay. 328); and a boiler and steam-engine fixed to stone-work by bolts and beams, and the entablature plate. (*Hubbard* v. *Bagshaw*, 4 Sim. 326). But a barn, windmill, or other building, resting by its own weight on the ground, or on brick or wooden supports, is not a fixture. (*Culling* v. *Tuffnell*, Bull. N. P. 34, commented on 3 East, 55; *Rex* v. *Londonthorpe*, 6 T. R. 377; *Rex* v. *Otley*, 1 B. & Ad. 161; *Naylor* v. *Collinge*, 1 Taunt. 19, 21; *Steward* v. *Lombe*, 1 Brod. & Bing. 206; S. C. 4 J. B. Moore, 281). And a vat or other utensil, resting on the ground, or on a support fixed in the ground, is not a fixture. (*Horn* v. *Baker*, ubi supra). So jibs, fastened by pins, but which could be removed without injuring the building, are not fixtures; (*Davis* v. *Jones*, 2 B. & Ald. 165; *Trappes* v. *Harter*, 2 Cro. & Mee. 153); nor the machinery of a steam-engine, if fixed by bolts and screws only. (*Hubbard* v. *Bag-*

What constitutes a fixture.

MANUFACTORY AND MACHINERY.

buildings, lands, and hereditaments, steam-engines, machinery, pipes, fixtures, articles and things, and all and singu-

---

shaw, ubi supra). The stones of a mill, keys, doors, windows, rings, and the like, even though temporarily disannexed, are fixtures. (*Liford's case*, 11 Co. Rep. 50 b; and see *Marter* v. *Bradley*, 9 Bing. 24; S. C. 2 Moo. & Scott, 25). The sails, too, of a windmill appear to be fixtures; (*Rex* v. *Crosse*, 1 Sid. 207); but manure, in a heap, is a mere chattel. (*Yearworth* v. *Pierce*, Alleyn, 32; S. C. nom. *Carver* v. *Pierce*, Sty. 66). See further, as to what are fixtures, ante, Vol. 3, p. 501; Amos & Ferard, Law of Fixtures, pt. 1, ch. 1, and generally.

General rule that the tenant cannot remove fixtures.

The ancient and general rule between landlord and tenant, with regard to fixtures, in the absence of express contract, is, that all personal chattels which have been so affixed to the freehold, either by landlord or tenant, as to become fixtures, cannot be removed by the tenant without waste. (Co. Lit. 53. a.; *Cook's case*, Moore, 177; *Lord Darcy* v. *Asquith*, Hob. 234; 2 Brod. & Bing. 58). But in modern times this rule has been much relaxed, and many exceptions grafted upon it in favour of the tenant; and in adverting to the cases on the subject, it is to be borne in mind that the right to fixtures is considered more favourably to the tenant against the landlord than to the executors of a deceased owner of the freehold against the succeeding owner; (2 East, 91; 3 East, 51; 6 Bing. 439, 440); and, therefore, where any case has been decided in favour of the executors of a deceased owner of the freehold, against the succeeding owner, such case is a fortiori a decision in favour of tenants; but it does not follow that a case decided against such executors is necessarily a decision against tenants.

Exception in favour of fixtures erected for ornament or domestic convenience;

One of the exceptions made in favour of the tenant has been in respect of chattels affixed for ornament or domestic convenience; such as ornamental chimney-pieces, pier glasses, hangings, wainscots fixed only by screws, and the like. (3 East, 53; *Squire* v. *Mayer*, 2 Eq. Ca. Abr. 430; S. C. Freem. Cha. Ca. 249; *Poole's case*, 1 Salk. 368; *Beck* v. *Rebow*, 1 P. Wms. 14; *Lord Dudley* v. *Lord Warde*, Amb. 113; *Harvey* v. *Harvey*, 2 Stra. 1141; *Allen* v. *Allen*, Mose. 112; *The King* v. *St. Dunstan*, 4 B. & C. 686; S. C. 7 Dow. & Ry. 178; *Grymes* v. *Bowereu*, 6 Bing. 437; *Birch* v. *Dawson*, 2 Ad. & Ell. 37; *Avery* v. *Cheslyn*, 3 Ad. & Ell. 75; S. C. 5 Nev. & Man. 372). There are, indeed, some cases of a contrary tendency, but with the exception of *Cave* v. *Cave*, 2 Vern. 508, (which cannot now be deemed of much authority), they relate rather to chattels so firmly annexed to the freehold as to have lost their character of fixtures. (See *Wynne* v. *Ingilby*, 5 B. & Ald. 625; *Colegrave* v. *Dios Santos*, 2 B. & C. 76; *Buckland* v. *Butterfield*, 2 Brod. & Bing. 54; S. C.

lar other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D. and E. F., their

MANUFACTORY AND MACHINERY.

4 J. B. Moore, 440; *Leach* v. *Thomas*, 7 Car. & Pay. 328; see, too, further, with respect to the foregoing exceptions, Amos & Ferard, Law of Fixtures, pt. 1, ch. 2, s. 4).

—and for purposes of trade;

Another exception has been made in favour of the tenant, in respect of fixtures put up for the purposes of trade, as mills, buildings, machinery, and the like. Thus, a cyder-mill is removable even by an executor of the freeholder; (3 Atk. 14); and so, too, is an engine set up for colliery purposes. (*Lawton* v. *Lawton*, 3 Atk. 13; *Lord Dudley* v. *Lord Warde*, Amb. 113). Salt-pans used in salt-works by the owner of the fee simple belong to his heir, not to his executor; (*Lawton* v. *Salmon*, 1 H. Bl. 259, n.); but Lord Mansfield in that case expressed an opinion, that, if erected by a tenant, to whom the springs had been let, they might have been removed by him. A wooden building, used by a tenant for the purpose of varnish making, which was his trade, was held to be removable by him, though it had been erected on a brick foundation. (*Penton* v. *Robart*, 2 East, 87; S. C. 4 Esp. 33). See further on the subject of trade fixtures, Amos & Ferard, Law of Fixtures, pt. 1, ch. 2, ss. 1, 3. In *Lowther* v. *Cavendish*, 1 Eden, 99, it was referred to the Master to determine, whether wooden railways, laid down for colliery purposes, were removable according to the custom of the country.

—but fixtures erected for agricultural purposes are not excepted.

Fixtures set up for agricultural purposes, by tenants or others, do not come within the same exception as trade fixtures. (*Elwes* v. *Maw*, 3 East, 38). But, of course, such barns and other things as are not actually fastened to the ground, may be removed, (see supra, p. 85). The claim, too, to such fixtures may in some cases be rendered valid by the custom of the country. (Vin. Abr. tit. *Executors* (U.) 74; *Culling* v. *Tuffnell*, Buller's N. P. 54, commented on 3 East, 55; see, too, *Lowther* v. *Cavendish*, 1 Eden, 99, 118; and Amos & Ferard, Law of Fixtures, pt. 1, ch. 2, ss. 2, 3).

Effect of express contracts between landlord and tenant as to fixtures.

Of course the landlord and tenant are at libety to enter into express contracts with respect to fixtures, so as to preclude the application of the general rules. And if the tenant covenants to yield up the premises at the end of the term, together with all things which shall have been affixed thereto during the term, he can remove nothing. (*Naylor* v. *Collinge*, 1 Taunt. 119; *Penry* v. *Brown*, 2 Stark. 533; *Marter* v. *Bradley*, 9 Bing. 24; S. C. 2 Moo. & Scott, 25; *Thresher* v. *The East London Waterworks Company*, 2 B. & C. 608; S. C. 4 Dow. & Ry. 62; *Rex* v. *Topping*, M'Lel. & You. 544; Amos & Ferard, Law of Fixtures, pt. 1, ch. 2., s. 6).

At what time the tenant's right to remove fixtures must be exercised.

The tenant's right to remove fixtures must be exercised during his term, (*Poole's case*, 1 Salk. 368), or, at least, during his continuance of possession, if he keep possession after the expiration of the term. (*Penton* v. *Robart*, 2 East, 88; S. C. 4 Esp. 33; see, too, Amos &

MANUFACTORY AND MACHINERY.

executors, administrators, and assigns, from the —— day of ——, for the term of —— years thenceforth next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore unto the said A. B., his heirs and assigns, during the said term hereby granted, the yearly rent or sum of £—— clear of all existing and future taxes, rates, assessments, and deductions whatsoever, to be paid by four equal payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, and the first of such quarterly payments to be made on the —— day of ——, now next ensuing: AND THE SAID C. D. and E. F. do hereby for themselves, their heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, in manner following, (that is to say), that they the said C. D. and E. F., their executors, administrators, or assigns, shall &c. [*covenants for payment of rent and taxes, supra, p.* 31]: AND THAT they the said C. D. and E. F., their executors, administrators, and assigns, shall and will, from time to time and at all times hereafter, at his and their own proper costs and charges, during the continuance of the said term, well and sufficiently repair, support, sustain, amend, maintain, pave, purge, scour, cleanse, preserve, and keep in good and substantial repair and condition, all and singular the said mansion or dwelling-house, factory, warehouses, cottages, engine-houses, messuages, tenements, erections, buildings,

Reddendum.

Covenant by the lessees for payment of the rent and taxes;

—and to repair and maintain;

Ferard, Law of Fixtures, pt. 1, ch. 2, s. 5; *Lyde* v. *Russell*, 1 B. & Ad. 394; *Minshall* v. *Lloyd*, 2 Mee. & Wels. 450; *Mackintosh* v. *Trotter*, 3 Mee. & Wels. 184; *Fitzherbert* v. *Shaw*, 1 H. Bl. 258). But, of course, this rule does not apply to such machinery as has been put up by the tenant during the term, and is capable of being removed without injuring the other parts of the machine, or the building, and is usually purchased by incoming tenants. (*Davis* v. *Jones*, 2 B. & Ald. 165).

Landlord's property in demised fixtures, and the right to distrain.

With respect to the landlord's property in fixtures demised with the soil, and which revert on severance, see *Farrant* v. *Thompson*, 5 B. & Ald. 826; S. C. 2 Dow. & Ry.; 1 Amos & Ferard, p. 188; and with respect to distraining on fixtures, see Amos & Ferard, pt. 2, ch. 2, s. 1.

A convenient summary of the rules respecting fixtures between landlord and tenant will be found in the Appendix, No. 1, to the above work; and most of the recent cases are cited in this note.

steam-engines, machinery, pipes, apparatus, fixtures, articles, and things aforesaid, and every of them, and the party and other walls, and all other houses, out-houses, edifices, erections, buildings, barns, stables, gates, pales, rails, stiles, hedges, ditches, banks, bridges, sewers, drains, sluices, water-courses, fences, and inclosures, in, upon, or belonging to the said hereby demised premises and every part thereof, in, by, and with all and all manner of needful and necessary reparations and amendments whatsoever, when, where, and as often as need or occasion shall be or require, and so as that the said steam-engines, machinery, pipes, apparatus, fixtures, and things aforesaid in the said schedule to these presents specified, may always be in good working and serviceable condition: AND ALSO, SHALL and will, at the end, expiration, or other sooner determination of the said term, peaceably and quietly leave, surrender, and yield up the same premises, together with all things which at any time during the said term shall be affixed to the freehold thereof, in such good and substantial repair and condition as aforesaid, the reasonable use and wear thereof in the mean time only excepted: AND FURTHER, THAT it shall be lawful for the said A. B., his heirs or assigns, and his or their agents, with or without workmen or others in his or their company, twice or oftener in every year, at seasonable times in the daytime, to enter and come into and upon the said hereby demised premises, or any part thereof, there to view, search, and inspect the state and condition of the same, and of all defects or wants of reparation and amendments then and there found, and which shall have been occasioned otherwise than in the reasonable use and wear thereof, to give or leave notice or warning in writing at or upon the said hereby demised mansion or dwelling-house for the said C. D. and E. F., their executors, administrators, or assigns, to repair or amend the same within the space of three calendar months next after such notice shall be so given or left as aforesaid, within which said time or space of three calendar months, they the said C. D. and E. F., their executors, administrators, or assigns, shall and will repair and amend all such defaults, decays, and wants of reparation and amendments as aforesaid, whereof

MANUFACTORY AND MACHINERY.

—and yield up at the end of the term;

—and that lessors may enter to inspect the condition of the premises, and that lessees, on notice, will repair in three months;

MANUFACTORY AND MACHINERY.

such notice shall be so given or left as aforesaid: AND FURTHER, THAT they the said C. D. and E. F., their executors, administrators, and assigns, shall and will from time to time, as often as occasion shall require, open and scour all the ditches and water-courses, in, about, or belonging to the said hereby demised premises; and also shall and will cut and maintain, wherever the same shall or may be necessary, proper drains for carrying off the surface water: AND ALSO SHALL and will, during the continuance of the said term, preserve and keep all the timber and other trees mentioned in the schedule hereto: AND FURTHER, THAT they the said C. D. and E. F., their executors, administrators, or assigns, shall and will in the year ——, and also in the year ——, during the continuance of the said term, well and sufficiently and in a good and workman-like manner, paint all the outside wood and iron-work of the said hereby demised premises with three good coats of oil paint, of the same colours as the same are now painted: AND SHALL and will, once during the said term, well and sufficiently, and in a good and workman-like manner, paint all the inside wood and iron-work of the said hereby demised premises with three good coats of oil paint of the same colours as the same are now painted: AND FURTHER, THAT THEY the said C. D. and E. F., their executors, administrators, or assigns, shall not nor will at any time permit or suffer any nuisance or noisy or offensive trade, business, or occupation whatsoever to be carried on in or upon the said hereby demised premises, or any part thereof (*b*): PROVIDED ALWAYS nevertheMANUFACTORY AND MACHINERY.

—and to scour ditches and water-courses, and to open new drains;

—and preserve trees mentioned in schedule;

—and in certain years to paint the outside of the premises;

—and to paint the inside once during the term;

—and not to allow offensive trades to be carried on.

Proviso for re-entry.

(*b*) With respect to the effect of this covenant, see supra, p. 36, n. (*h*). There are numerous decisions with respect to the trades which are common-law nuisances. The erection of any thing offensive, so near to the house of another as to render it useless and unfit for habitation, is actionable, *e. g.* a swine-stye, or a lime-kiln, (*Aldred's case*, 9 Rep. 59 a), a privy, (*Jones* v. *Powell*, Hutt. 136), a smith's forge, (*Bradley* v. *Gill*, Lutw. 69), a tobacco-mill, (*Styan* v. *Hutchinson*, 2 Selw. N. P. 1379, 5th edit.), a tallow-furnace. (*Morley* v. *Pragnell*, Cro. Car. 510). And generally such offensive occupations may be indicted as public nuisances, *e. g.* a glass-house, (*Rex* v. *Brookes*, Tremaine, Pl. Cor. 195), a soap-boiler's or tallow-furnace, (Id. 198; *Tobayle's case*, cited Cro. Car. 510; but see, *Renkett's case*,

Nuisances at common law, private and public.

less, and these presents are upon the express condition, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind or unpaid by the space of twenty-one days next over or after any of the said days whereon the same ought to be paid, (whether the same shall

MANUFACTORY AND MACHINERY.

---

2 Roll. Abr. 139, F. pl. 2, commented on 1 Hawk. P. C. c. 75, s. 10, p. 199); sulphur, vitriol, and aqua-fortis works; (*Rex* v. *White*, 1 Burr. 333); a slaughterer of horses. (*Rex* v. *Cross*, 2 Car. & Pay. 483; *Rex* v. *Watts*, Id. 486). And to support an indictment, (and a fortiori an action for a nuisance,) it is not necessary that the smells produced should be unwholesome; it is enough if they be offensive to the senses, so as to render the enjoyment of life and property uncomfortable. (Per Lord Mansfield, 1 Burr. 337; *Rex* v. *Neil*, 2 Car. & Pay. 485). A contrary doctrine seems to have been held in the case of an indictment, in *The King* v. *Davey*, 5 Esp. 217, where coke-ovens were held not to be indictable unless they injured health, but the former is the better opinion. There can be no doubt that a coke-oven is a private nuisance. (See the cases previously cited; and see, too, further, as to the distinction between a public and private nuisance, *The King* v. *Lloyd*, 4 Esp. 200). It is said that a brewhouse and a sugar-house are not nuisances. (18 Ves. 217; 1 Sim. & Stu. 68).

Courts of equity have a jurisdiction to restrain nuisances by injunction, whether they be public or private; but the jurisdiction is exercised with great caution, until the alleged nuisance has been established to be so by indictment or action at law. (*The Attorney-General* v. *Cleaves*, 18 Ves. 211, relating to a soap and black ash manufactory; *Crowder* v. *Tinkler*, 19 Ves. 617, relating to a powder mill; see, too, 1 Dick. 163, 175). In the *Duke of Grafton* v. *Hilliard*, cited 18 Ves. 219, the court refused to restrain the defendant from burning brick earth in the neighbourhood of dwelling-houses, observing that the manufacture of bricks, though near the habitations of men, if carried on for the purpose of making habitations for them, is not a public nuisance. This case can, however, hardly be considered to decide that an action might not be sustained for the burning of bricks; and, on the authority of the cases above cited, it would seem that brick burning must be a private nuisance, as there can be no doubt that it is offensive to the senses. And, at all events, the burning bricks for sale, to be used elsewhere than in the immediate neighbourhood of the kilns, would be a nuisance. See further, with regard to the jurisdiction of the courts of equity in cases of nuisance, *The Earl of Ripon* v. *Hobart*, 3 My. & Ke. 169; *Squire* v. *Campbell*, 1 My. & Cra. 459; *Attorney-General* v. *Forbes*, 2 My. & Cra. 123; *Spencer* v. *The London and Birmingham Railway*, 8 Sim. 193; and the various cases cited in those here referred to.

Injunctions to restrain.

MANUFACTORY AND MACHINERY.

have been demanded or not) (*c*), or in case they the said C. D. and E. F., their executors, administrators, or assigns, shall not well and truly observe and perform all and singular the covenants, conditions, and agreements hereinbefore contained, and on their parts to be observed and performed, then, and in either of the said cases, it shall be lawful for the said A. B., his heirs or assigns, into the said premises hereby demised, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as in his and their former estate, anything herein contained to the contrary notwithstanding:

Covenant by the lessor for quiet enjoyment.

AND THE SAID A. B. doth hereby for himself, his heirs and assigns, covenant with the said C. D. and E. F., their executors, administrators, and assigns, that they the said C. D. and E. F., their executors, administrators, and assigns, paying the rent hereinbefore reserved at the times and in manner hereinbefore appointed, and observing all and singular the covenants, conditions, and agreements herein contained, and on their parts to be observed and performed, according to the true intent and meaning of these presents, shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said messuages, lands, hereditaments, articles, things, and premises hereby demised during the said

Propriety of dispensing with any demand before a re-entry for non-payment of rent.

(*c*) The insertion of this stipulation in the proviso for re-entry is strongly to be recommended. (See supra. p. 68, n. (*k*)). There can be no doubt of the power of the parties to dispense either with the formalities of legal demand, or with any demand at all. (*Dormer's case*, 5 Co. Rep. 40; *Goodright, lessee of Hare*, v. *Cator*, 2 Doug. 477; *Rede* v. *Farr*, 6 Mau. & Sel. 121). The words, "although no formal or legal demand shall be made for payment thereof," were considered to dispense with all demand. (*Doe* d. *Harris* v. *Masters*, 2 B. & C. 490; S. C. 4 Dow. & Ry. 45). Although the power of re-entry is exercisable on breach of any of the covenants, as well as on non-payment of rent within twenty-one days after its becoming due; and one of the covenants is for payment of rent, without any reference to the delay of twenty-one days, yet there can be no doubt that the covenant is qualified by the proviso, so as to preclude a re-entry, for breach of that covenant, till the expiration of the twenty-one days. (*Smith* v. *The Earl of Jersey*, 2 Brod. & Bing. 473; S. C. on appeal, 3 Bligh, 290). It would be more accurate to except the covenant for payment of rent in giving the power of re-entry for breach of covenants, but such is not the usual practice.

MANUFACTORY AND MACHINERY.

term of —— years hereby granted, without the lawful let, suit, denial, eviction, or disturbance of him the said A. B., his heirs or assigns, or of or by any persons or person lawfully or equitably claiming or to claim by, from, through, or under him, them, or any of them: AND FURTHER, THAT if they the said C. D. and E. F., their executors, administrators, or assigns, shall be desirous at any time, during the continuance of the said term hereby granted, and before the —— day of ——, to purchase the fee-simple and inheritance of the said messuages, lands, tenements, and hereditaments hereby demised, together with the several steam-engines, machinery, pipes, apparatus, fixtures, articles, and things specified in the said schedule hereto, and every thing then upon or affixed to the said premises, at or for the price or sum of £——, and of such their desire shall give to the said A. B., his heirs or assigns, six calendar months' previous notice in writing, such notice to expire on some —— day of —— or —— day of ——, that then and in such case, he the said A. B., his heirs or assigns, shall and will, at or before the expiration of such notice, at his and their own costs and charges, make out and deliver to the said C. D. and E. F., their executors, administrators, or assigns, an abstract of the title to the said hereditaments and premises, and upon payment of the said principal sum of £——, together with interest thereon at the rate of 5*l.* per cent. per annum, from the expiration of such notice until the day of payment, and after payment of all rent then accrued due under or by virtue of the reservations hereinbefore contained, well and effectually convey and assure, or cause to be conveyed and assured by all necessary parties, all and singular the said hereditaments and premises and the inheritance thereof in fee-simple (together with the articles and things aforesaid) unto the said C. D. and E. F., their executors, administrators, or assigns, or as they shall direct: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that the said C. D. and E. F., their executors, administrators, or assigns, shall accept such title to the fee-simple and inheritance of the said hereditaments and premises, as the said A. B. his heirs or assigns, shall or

—and that lessees may purchase the inheritance at a fixed sum on giving notice to that effect before a certain day.

Lessees to accept such title as the lessors may have.

MANUFACTORY AND MACHINERY.

may then have, without any objection thereto on any account whatsoever: AND THAT all expenses of and attending the investigation of the said title, and all attested or other copies of deeds, wills, or other documents, and all deeds of covenant for production of deeds, and assignments of terms, and all certificates and evidences of title whatsoever, and all other expenses attending the said purchase and conveyance, (except the expenses of making out and delivering the said abstract of title,) shall be borne and paid as to the sum or amount of £—— by the said A. B., his heirs or assigns, and as to the entire residue thereof by the said C. D. and E. F., their executors, administrators, or assigns (*d*). IN WITNESS &c.

Agreement as to the expenses attending the purchase.

As to giving an option to the lessee to purchase the fee.

(*d*) Where the terms of a power of this nature were, "that if the lessee, his executors, administrators, or assigns, should be desirous to purchase the premises within six years, he, his executors, administrators, or assigns, should pay to the lessor, his heirs or assigns, £—— upon having a good title made to him, [*the lessee*], his executors, administrators, or assigns," and the lessee declared, after the death of the lessor, his option to purchase, it was held that the rents, until the declaration of the option, belonged to the heir, but that immediately upon such declaration, the property, as between the real and personal representatives of the lessor, was converted into personalty, and the purchase-money belonged to the personal representatives. (*Townley* v. *Bedwell*, 14 Ves. 591; see, too, *Wright* v. *Rose*, 2 Sim. & Stu. 323). It was held, too, that, from the time of the declaration, the rents belonged to the lessee, and that he must thenceforth pay interest on his purchase-money to the personal representatives of the lessor. (*Townley* v. *Bedwell*, ubi supra.)

If the option to purchase were declared after the death of the lessee, by his executors or administrators, the estate would, it is conceived, form part of the personal estate of the lessee; but if the option were given to the "lessee, or his *heirs*," it might be considered that the heir would be entitled to have the estate purchased for him out of the personal estate of the lessee, and to have the lease surrendered to him by the executors or administrators. The option should, however, be always given to the "lessee, his executors, administrators, or assigns."

As to how far options of this nature are personal, or are annexed to the land, some judgment may, perhaps, be formed from the cases of *Roe* d. *Bamford* v. *Hayley*, 12 East, 464; *Simpson* v. *Clayton*, 4 Bing. N. C. 758, 780.

VII.

UNDERLEASE *of* MANUFACTORIES, *with special Provisions for* INSURANCE *against* FIRE, *in case the Buildings or Trade shall be deemed* HAZARDOUS. *The original Lessors insure for the common Risk, but the Payments for extraordinary Risk are to be made by the Lessee, and are reserved as Rent. The Lessee is to rebuild after Damage by Fire, and is to be repaid out of the Insurance Monies recovered.* COVENANTS (*amongst others*) *not to carry on* OFFENSIVE TRADES,—*and not to Assign or Underlet without* LICENSE. ALL INSTRUMENTS *to be prepared by the Clerk of the original Lessors.*

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

THIS INDENTURE, made &c. BETWEEN A. B., of &c. [*lessor*], of the one part; and C. D., of &c. [*lessee*], of the other part: [*Recital of lease from the Master, Wardens, and Commonalty of &c., to E. F., G. H., and A. B., their executors, administrators, and assigns, for the term of —— years.—(See the form, ante, Vol. 3, p. 333),—and of release by E. F. and G. H. of their interest to A. B., his executors, administrators, and assigns:*] AND WHEREAS the said A. B. hath contracted and agreed with the said C. D. to grant him an underlease of the said premises for the term, at the rent, and under and subject to the covenants, conditions, and agreements hereinafter granted, reserved, and contained (*a*): NOW THIS INDENTURE WITNESSETH, that, in consideration of the rents hereinafter reserved, and of the covenants, conditions, and

Parties.

Recital of original lease, and of its assignment to the present lessor.

Agreement for lease.

Witnesseth, Consideration.

(*a*) An underlease need not contain a recital of the original lease, unless there are circumstances which render a reference to it unavoidable. The rules and precautions to be observed in preparing underleases will be stated in the first volume of this work, *Art.* LEASES.

As to recital in underlease of original lease.

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

agreements hereinafter contained and on the part of the said C. D., his executors, administrators, and assigns, to be observed and performed: He the said A. B., with

Demise, with license of original lessors.

the license and consent of the said Master, Wardens, and Commonalty, (testified by a resolution to that effect entered in their Court-book (*b*)), hath demised and leased, and by these presents doth demise and lease, unto the said

Parcels.

C. D., his executors, administrators, and assigns, ALL AND SINGULAR the said two messuages, hereditaments, and premises by the said indenture of the —— day of —— demised, or expressed and intended so to be, (which two messuages or parts thereof are now used as warehouses), with their rights, easements, and appurtenances:

Habendum for the original term, wanting ten days.

TO HAVE AND TO HOLD the said messuages and hereditaments, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, from the —— day of ——, for the term of —— years, [*the whole residue then to come of the term*], wanting ten days

---

How far a corporation aggregate is bound by a resolution not under seal.

(*b*) A corporation could not in general be bound by a resolution of this nature, or by any agreement not under the corporation seal; (*Winne* v. *Bampton*, 3 Atk. 473, 475; *Wilmot* v. *The Corporation of Coventry*, 1 You. & Col. 518; *Carter* v. *Dean and Chapter of Ely*, 7 Sim. 211); but if the lease requires only a license testified by an instrument not under seal, it is probable that a license so given is valid. In ancient times the rule was universal, that, although the head of a corporotion aggregate (if there were a head) might, in some small matters, bind the corporation, yet that a corporation aggregate, not having a head, could not be bound except by writing under the common seal. But this rule is now relaxed, and it is now settled that such corporations may sue and be sued on executed parol contracts. (*The Mayor and Burgesses of Stafford* v. *Till*, 4 Bing. 75; *Beverley* v. *The Lincoln Gas Light and Coke Company*, 2 Nev. & Per. 283; *Gibson* v. *The East India Company*, 5 Bing. N. C. 262; *Church* v. *The Imperial Gas Light and Coke Company*, 3 Nev. & Per. 35). It seems to be extremely probable, that, if a regular resolution had been passed by a corporation, for granting an interest in part of the corporation property, and, upon the faith of that resolution, expenditure had been incurred, a court of equity would compel the corporation to make a legal grant in pursuance of that resolution. (*Macher* v. *The Foundling Hospital*, 1 Ves. & Bea. 188, which related to a license to a lessee to carry on trade; *Marshall* v. *The Corporation of Queenborough*, 1 Sim. & Stu. 520; *Maxwell* v. *Dulwich College*, 7 Sim. 222, 227).

thereof thence next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefore yearly, during the said term hereby granted, the sum of £——, by equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September in every year, save and except that the last quarterly payment of the said rent or sum of £—— shall become payable and be paid on the 1st day of September, ——(c): AND ALSO YIELDING AND PAYING therefore from time to time, during the said term hereby granted unto the said A. B., his executors, administrators, and assigns, all and every the extraordinary premiums, duties, sum and sums of money, costs, charges, and expenses whatsoever, which he or they shall at any time or times hereafter during the said term, by reason of any alterations or additions, or communications, made in, to, or with the said messuages hereinbefore demised, or either of them, or the carrying on of any hazardous trade or business in the same, or either of them, be called on or find it desirable to pay to the said Master, Wardens, and Commonalty, their successors or assigns, or otherwise expend for or on account of insuring against loss or damage by fire, either annually or septennially, in the name of the said Master, Wardens, and Commonalty, or otherwise, in any reputable office of insurance in London, or the suburbs thereof, the said messuages hereinbefore demised, or either of them, the said last-mentioned rents or sums to be paid on such one of the days hereinbefore appointed for the quarterly payments of the said rent of £—— as shall happen next after any such sum or sums of money as aforesaid shall have been paid or expended; AND ALSO YIELDING AND PAYING therefore the further sum of twenty-one shillings for every assignment, that shall or may at any time or times hereafter be made by him the said C. D., his executors, administrators, or assigns, of this lease, or of the said messuages and premises hereinbefore demised, or any of them, or any part thereof, to any person or persons whomsoever, the same to be paid at the time of executing such assignment; THE SAID

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

Reddendum of yearly rent;

—and of extraordinary payments for insurance against fire;

—and of a stated sum on every assignment.

The rents to be

(c) See supra, p. 48, n.

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

paid clear of deductions.

Covenants by lessee for payment of rent and taxes;

—and not to make alterations, &c., requiring higher insurance, without license;

—and to give due notice of such alterations, &c.;

SEVERAL rents or sums hereinbefore reserved and made payable, to be paid clear of all existing and future taxes, rates, assessments, deductions, and outgoings whatsoever, except the present land-tax: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, in manner following: that is to say, [*covenants for payment of rents and taxes*, "except the present land-tax," see *supra*, *pp.* 31, 51]: AND ALSO THAT he the said C. D., his executors, administrators, or assigns, shall not nor will, at any time or times hereafter during the said term hereby granted, make or do, or permit or suffer to be made or done, any alteration or alterations, or addition or additions, in or to the said messuages and premises hereinbefore demised, or any of them, or any communication or communications to or with any adjacent building or buildings or other premises, or carry on any trade or business in or upon the said messuages and premises, or any of them, or any part thereof, which, according to the terms of the fire offices wherein the same messuages shall or may for the time being be insured, be deemed or considered as hazardous, and require the payment of additional premiums or expenses of insurance, without the license and consent in writing of the said A. B., his executors, administrators, or assigns, and also of the said Master, Wardens, and Commonalty, their successors or assigns, for that purpose first had and obtained: AND FURTHER, THAT in case he the said C. D., his executors, administrators, or assigns, shall, at any time or times during the said term hereby granted, be desirous (with such licenses and consents in writing as aforesaid) to make, or permit or suffer to be made, any alteration or alterations, or addition or additions, in or to the said messuages and premises, or any of them, or any part thereof, or any communication or communications to or with any adjacent building or buildings or other premises, whereby or by means whereof the said messuages and premises hereinbefore demised, or any of them, shall or may be rendered, or be, by the directors or officers of the fire-office or offices wherein the same shall for the time being be insured, deemed to be, hazardous buildings

or a hazardous building, or to carry on or permit or suffer to be carried on in or upon the same messuages and premises, or any of them, or any part thereof, any trade or business which shall or may by such directors or officers as aforesaid be deemed to be hazardous, and by means of any such alteration, addition, or communication, trade or business, as aforesaid, any further or other insurance or insurances of the same messuages and premises, or any of them, from loss or damage by fire shall become necessary to be made, then, and in any and every such case, he the said C. D., his executors, administrators, or assigns, shall and will, from and after such licenses and consents in writing for that purpose shall have been given by the said A. B., his executors, administrators, or assigns, and by the said Master, Wardens, and Commonalty, their successors or assigns, at least twenty-eight days before the commencing and making of any and every such alteration, addition, or communication, or before any such trade or business shall be begun to be carried on, give notice in writing of such his or their desire to the said A. B., his executors, administrators, or assigns, and also to the said Master, Wardens, and Commonalty, their successors or assigns, in order that such further or other insurance or insurances may be made accordingly: AND SHALL and will thenceforth and from time to time thereafter, during the continuance of the said term hereby granted, pay unto the said A. B., his executors, administrators, or assigns, at the times and in manner aforesaid, all and every such extraordinary premiums, duties, sum and sums of money, costs, charges, and expenses whatsoever, as shall be by him or them, during the said term hereby granted, paid to the said Master, Wardens, and Commonalty, or otherwise expended for or in respect of the making such further or other insurance or insurances as aforesaid: AND MOREOVER, THAT he the said C. D., his executors, administrators, or assigns, shall and will, during the said term hereby granted, bear, pay, and discharge all costs, charges, and expenses whatsoever, of and attending, or which shall or may be caused by the supporting and upholding, and, if necessary, the rebuilding of all and every the party walls and fences and party arches and gutters

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

—and repay the extraordinary premiums and costs;

—and for payment of cost of supporting party-walls, &c.;

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

of or belonging to or being between the said messuages and premises hereinbefore demised, or any of them, or any part thereof, and any other messuage or messuages, or other building or buildings and premises, adjoining thereto, as and where the same shall become necessary and be required: AND ALSO, THAT he the said C. D., his executors, administrators, or assigns, shall and will, from time to time and at all times during the said term hereby granted, at his or their own costs and charges, well, sufficiently, and substantially repair, uphold, support, sustain, maintain, glaze, paint, pave, purge, scour, cleanse, empty, amend, and keep the said messuages and premises hereinbefore demised, and every part thereof, with all and every the appurtenances thereunto belonging, in, by, and with all and all manner of needful and necessary cleansings, reparations and amendments whatsoever, when, where, and as often as need or occasion shall be or require: AND MORE PARTICULARLY shall and will in the year ——, and also in the year ——, in a good and workmanlike manner, paint twice over, with good and proper oil-colour, all the outside wood and iron work of and belonging to the same messuages and premises: AND AT THE END or other sooner determination of the said term hereby granted, the same messuages and premises, with all and every the appurtenances thereunto belonging, so well, sufficiently, and substantially repaired, upheld, supported, sustained, maintained, glazed, painted, paved, purged, scoured, cleansed, emptied, amended, and kept as aforesaid, together with all locks, keys, bolts, bars, hinges, fastenings, bells, wainscotting, partitions, closets, privies, water-closets, dressers, shelves, leaden and other pipes, windows, window-shutters, marble and other chimney-pieces, hearths and slabs, fixtures, additions, improvements, and things whatsoever, which now are fixed or belonging, or which shall or may, at any time during the said term hereby granted, be fixed or belong, to the same messuages or either of them, and premises, or any part thereof, shall and will peaceably and quietly leave, surrender, and yield up unto the said A. B., his executors, administrators, or assigns: AND FURTHER, THAT it shall be lawful for the said A. B., his executors,

—and to maintain and repair;

—and in certain years to paint the outside;

—and yield up at the end of the term;

—and that the lessors may enter to make

administrators, and assigns, and his and their agents and servants, and also for the said Master, Wardens, and Commonalty, their successors and assigns, and their and his agents and servants, at all seasonable times during the said term hereby granted, to enter and come into and upon the said messuages and premises hereinbefore demised, and every part thereof, and there to make a schedule or inventory, schedules or inventories, of the several articles, fixtures, additions, improvements, and things lastly above mentioned, and agreed to be left and yielded up as aforesaid, and which inventory or schedule, inventories or schedules, he the said C. D., his executors, administrators, or assigns, shall and will from time to time sign, upon request for that purpose being made to him or them by the said A. B., his executors, administrators, or assigns, or by the said Master, Wardens, and Commonalty, their successors or assigns, or his or their surveyors or agents: AND ALSO, THAT it shall be lawful for the said A. B., his executors, administrators, or assigns, and his or their agents and servants, and also for the said Master, Wardens, and Commonalty, their successors or assigns, and their and his agents and servants, with or without workmen or others in his or their company, at all seasonable times during the said term hereby granted to enter and come into and upon the said messuages and premises hereinbefore demised, and every part thereof, and there to view, search, and see the state and condition of the reparations thereof, and of all defects, defaults, decays, and wants of reparation and amendment which shall be found to give or leave notice, in writing, at or on the same messuages and premises or any of them, unto or for the said C. D., his executors, administrators, or assigns, to repair and amend the same within the space of three calendar months thence next following, within which time he the said C. D., his executors, administrators, or assigns, shall and will well, sufficiently, and substantially repair and amend the same accordingly: AND ALSO, THAT in case the said Master, Wardens, and Commonalty, their successors or assigns, or their or his agents or servants, shall give or leave any notice whatsoever at or on the said messuages, or either of them,

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

schedules of fixtures, which the tenant is to sign;

—and that lessors may enter to view condition, and that on notice tenant will repair;

—and that, if the superior landlord give a notice to the tenant, he will inform the im-

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

to repair and amend the said messuages and premises or any part thereof, then, and in every such case, he the said C. D., his executors, administrators, or assigns, shall and will immediately make known the same to the said A. B., his executors, administrators, or assigns; and also repair and amend the said premises according to every such notice: AND ALSO, THAT he the said C. D., his executors, administrators, or assigns, shall not and will not, during the said term hereby granted, use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, in or upon the said messuages and premises hereinbefore demised, or any of them, or any part thereof, any trade, business, or occupation which may be noisome, noxious, noisy, or offensive (*d*): AND MOREOVER, THAT he the said C. D., his executors, administrators, or assigns, shall not nor will underlet, demise, or assign the said messuages and premises hereinbefore demised, or any part thereof, for the term of years hereby granted, or any part thereof, to any person or persons whomsoever, without the license and consent in writing of the said A. B., his executors, administrators, and assigns, and also of the said Master, Wardens, and Commonalty, their successors or assigns, first had and obtained (*e*): AND ALSO, THAT all assignments and underleases of the said messuages and premises hereinbefore demised, or any of them, or any part thereof, and all writings and agreements whatsoever, of, relating to, or concerning the same, which shall or may, at any time or times during the said term hereby granted, be made or entered into, by, from, or with him the said C. D., his executors, administrators, or assigns, or any person or persons who shall or may have or claim any estate, right, title, interest, or benefit, either at law or in equity, by, from, through, under, or in trust for him or them, shall be prepared and made by or with the order and direction of the clerk for the time being to the said Master, Wardens, and Commonalty, or their successors, and that the reasonable costs and charges of preparing and making the same shall be borne

—mediate landlord;

—and will not carry on any offensive business;

—and will not underlet or demise the premises without notice;

—and that all writings affecting the premises, shall be prepared by the clerk of the corporate body—the original lessors;

(*d*) See supra, p. 37, n.; and p. 90, n. (*b*).

(*e*) See supra, p. 60, n. (*h*).

and paid by the party or parties for whom the same shall be prepared and made: AND FURTHER, THAT, in case the said messuages and premises hereinbefore demised, or any of them, shall, during the said term hereby granted, be burnt down or receive damage by fire, then and in every such case he the said C. D., his executors, administrators, or assigns, shall and will forthwith, from time to time, at his or their own costs and charges, rebuild, make good, and perfectly reinstate the said premises which shall be so burnt down or damaged as aforesaid: PROVIDED ALWAYS, &c., [*proviso for re-entry on non-payment of rents or breach of covenants, supra, p.* 68], AND THE SAID A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, in manner following: that is to say, that &c. [*covenant for quiet enjoyment, supra, p.* 92]: AND ALSO, THAT he the said A. B., his executors, administrators, or assigns, shall and will from time to time, during the said term hereby granted, pay unto the Master, Wardens, and Commonalty, their successors or assigns, all and every the sum and sums of money, which they the said Master, Wardens, and Commonalty, their successors or assigns, shall pay or expend for insuring, either annually or septennially, in their own name, in any reputable office of insurance in London or the suburbs thereof, the said messuages and premises hereinbefore demised, in the sum of £——, from any loss or damage by fire during the said term hereby granted, and which he the said A. B., his executors, administrators, or assigns, shall be liable to pay in that behalf, according to the true intent and meaning of the said indenture of the —— day of ——, [*the original lease*]: AND ALSO, THAT, in case the said messuages and premises hereby demised, or any of them, shall, at any time or times during the continuance of the said term hereby granted, be destroyed or damaged by fire, and the said C. D., his executors, administrators or assigns, shall rebuild, make good, and perfectly reinstate in a good, substantial, and workmanlike manner, and to the entire good-liking and satisfaction of the surveyor for the time being to be employed by the said Master, Wardens, and Commonalty, their succes-

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

—and that lessee will make good all damage by fire.

Proviso for re-entry.

Covenant by lessor to pay certain insurance premiums to original lessors;

—and that, as soon as the lessee shall have rebuilt premises burnt down, lessor will obtain from the original lessors, and pay to the lessee, the insurance monies recovered;

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

sors and assigns, and of the said A. B., his executors, administrators, or assigns, the said premises which shall have been so burnt down or damaged as aforesaid, then and immediately thereafter he the said A. B., his executors, administrators, or assigns, shall and will use his or their best exertions (but at the proper costs and charges in all things of the said C. D., his executors, administrators, and assigns) to obtain, recover, and receive from the said Master, Wardens, and Commonalty, their successors or assigns, all such sum and sums of money as they the said Master, Wardens, and Commonalty, their successors or assigns, shall actually receive, by virtue of any insurances against fire effected by them, in pursuance of the covenant in that behalf contained in the said indenture of the —— day of ——, [*the original lease*], and as they shall be liable to pay to the said A. B., his executors, administrators, and assigns, under and by virtue of the same indenture; and also that he the said A. B., his executors, administrators, or assigns, shall and will pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, all such sum and sums of money as the said A. B., his executors, administrators, or assigns, shall so actually obtain, recover, or receive from the said Master, Wardens, and Commonalty, their successors or assigns, as last aforesaid. IN WITNESS &c. (*f*).

Liability of lessees to make good damage by accidental fire in the absence of special stipulation.

(*f*) At the common law, lessees were not answerable to landlords for accidental or negligent burning of houses by fire, but the statute of Gloucester, by making tenants for years liable for waste without any exception, rendered them answerable for destruction by fire. The ancient law is, however, restored by the statute 6 Anne, c. 31, s. 6, which exempts from actions all persons "in whose house or chamber any fire shall accidentally begin." (Co. Litt. 57. a., n. 1; 53. a., n. 7; 53. b., n. 5; 1 Wm. Saund. 323 a, n. (7); see, too, the Building Act, 14 Geo. 3, c. 78, ss. 88, 101).

Under general covenant to repair.

The 7th section, however, of the statute of Anne provides, that special agreements between landlord and tenant are not to be thereby affected. If, therefore, a lessee covenant to repair generally, without an exception in cases of fire, he must rebuild or repair in case of destruction or damage by fire; (*Bullock* v. *Dommitt*, 6 T. R. 650); and the assignee is bound by the covenant. (Ib.; see, too, *Phillipson* v. *Leigh*, 1 Esp. 398; *Pym* v. *Blackburn*, 3 Ves. 34, 38).

And if the lease contain a covenant to insure for a certain sum, and

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

also a general covenant to repair, the liability to repair, in case of fire, is not limited by the amount of the insurance. (*Digby* v. *Atkinson*, 4 Campb. 275). Nor, if the tenant covenant to repair generally, is he exempted from repairing or rebuilding, in case of fire, by the landlord's having, in fact, insured the premises, and received the insurance money; (*Leeds* v. *Cheetham*, 1 Sim. 146); nor has he, in such case, any equity to compel the landlord to lay out the insurance money in the repairs. (Ib.; see, too, *Pinder* v. *Ainsley*, cited 1 T. R. 312). And where the landlord covenanted to maintain the outside work, and the tenant the interior, and the landlord insured, and the premises were burnt, it was held, that although the landlord was bound to perform his covenant, yet that the tenant had no equity to have the whole of the insurance money laid out on the premises before he commenced his own repairs. (*Leeds* v. *Cheetham*, ubi supra).

Lessee bound to pay rent, notwithstanding the premises are burnt down.

And whether the lessee be or be not bound by his covenant to repair in case of fire, yet he is bound to pay rent under his covenant for that purpose, unless he be specially exempted; (*Monk* v. *Cooper*, 2 Stra. 763; S. C. 1 Ld. Raym. 477; *Belfour* v. *Weston*, 1 T. R. 310; *Camden* v. *Morton*, 1 Selw. N. P. 464); and so in the case of an agreement to pay rent during a tenancy from year to year. (*Baker* v. *Holtzapffel*, 4 Taunt. 45). And so, where a tenant held a second floor without any written agreement, and the premises were burnt, he was held liable to pay rent in an action for use and occupation for the period which elapsed between the fire and the regular determination of the tenancy. (*Iron* v. *Gorton*, 5 Bing. N. C. 501). And there is no equity in favour of a lessee to restrain an action for rent, even if the lessee be exempted from rebuilding; the rent must be paid whether the houses are standing or not. (*Hare* v. *Groves*, 3 Anst. 687; *Holtzapfell* v. *Baker*, 18 Ves. 115, overruling some earlier cases there cited). Nor is the lessee relieved from payment of rent, even by the lessor having covenanted to rebuild in part, and not having done so. (*Leeds* v. *Cheetham*, 1 Sim. 146).

Covenant to insure;—whether it runs with the land;

A covenant to lay out a given sum of money in rebuilding or repairing in case of damage by fire, is a covenant running with the land; and within the limits of the Building Act, 14 Geo. 3, c. 78, a covenant to insure in a given sum also runs with the land, because the act provides that money recovered under such a covenant shall be laid out in rebuilding. (*Vernon* v. *Smith*, 5 B. & Ald. 1). A covenant "to insure and keep insured a given sum of money upon the premises, during the term, in some sufficient insurance office," is a valid covenant, not void for uncertainty as to the office. (*Doe* d. *Pitt* v. *Shewin*, 3 Camp. 134).

—when sufficiently certain;

—what a breach of;

If there be a covenant to insure, such covenant is broken by the premises being left uninsured for any part, however small, of the term, even though no fire occur and a proper insurance be afterwards established. (*Doe* v. *Shewin*, ubi supra; *Doe* d. *Pitt* v. *Laming*,

OF MANUFACTORIES TO BE INSURED AS HAZARDOUS.

4 Camp. 73). And equity will not grant an injunction, or relieve a tenant against an ejectment for breach of covenant to insure. (*Reynolds* v. *Pitt*, 19 Ves. 134; *Rolfe* v. *Harris*, 2 Price, 206; *White* v. *Warner*, 2 Mer. 459; *Green* v. *Bridges*, 4 Sim. 96).

—no equity to relieve against breach of.

Lessor's liability under a covenant to rebuild in case of fire.

If a lessor covenant, that, in case of fire, he will "rebuild and replace" the same, in the same state as they were in before the fire, he is only bound to restore the premises to the state in which they were when he let them, and is not bound to rebuild any additional parts erected by the tenant. (*Loader* v. *Kemp*, 2 Car. & Pay. 375).

Right of Insurance Company to sustain interpleader between landlord and tenant.

It seems that an Insurance Company may sustain a bill of interpleader in respect of premises which have been burnt down, and which had been insured by the landlord and the tenant under an agreement for a lease—the tenant claiming a right to have the money laid out in rebuilding the premises. (*Paris* v. *Gilham*, G. Coop. 56).

See further on the subject of insurance against fire, ante, Vol. 3, p. 499, n. (*d*). The questions as to what acts will vitiate policies, and as to ordinary and hazardous policies, do not come within the province of the conveyancer, and the reader must be referred for information respecting them to the works on Insurance.

Mode of framing the covenants for insurance in leases.

With respect to framing covenants for insurance against fire in leases, it may be observed, that the insurance may be covenanted to be made either in the name of the landlord or of the tenant, or in the names of both. The best, and perhaps the most usual way, is to insure in the name of the landlord; and either in that case, or in the case of an insurance in the joint names, the covenant should be to deliver the policy and the receipts to the landlord, to remain in his custody. If the tenant is to insure in his own name, the covenant may be to deposit the policy and receipts with the landlord, but it more usually is, to produce the policy and receipts whenever required. This latter stipulation is essential, if the tenant is to retain the policy and receipts; for in ejectment for breach of covenant to insure, it lies upon the landlord to prove the breach, which it is almost impossible for him to do. (*Doe* d. *Bridger* v. *Whitehead*, 3 Nev. & Per. 557). The covenant should be not only to insure, but to expend the insurance money in rebuilding, so that the covenant may certainly run with the land. (See *Vernon* v. *Smith*, 5 B. & Ald. 1).

VIII.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

LEASE *by two* TENANTS IN COMMON *to their* CO-TENANT, *of an undivided Share of a* MANSION-HOUSE *and* ESTATES *for the joint Lives of all Parties.* GENERAL COVENANTS *for the* MANAGEMENT *of the Lands, Woods, Gardens, and Pleasure Grounds, and other usual Covenants.* COVENANT *by the Lessee to* INSURE *the Mansion-House, and lay out the Insurance Monies in Rebuilding.* AGREEMENT *that Lessee may, during the Term, receive the* INTEREST *of* CERTAIN MONIES, *applicable to the Purchase of Lands to be settled to the Uses of those demised, and that such Lands when purchased shall be deemed to be included in the present Lease, and be held accordingly* (*a*).

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., and C. D., of &c., [*lessors*], of the one part; and E. F., of &c., [*lessee*], of the other part: WHEREAS the said A. B., C. D., and E. F., are seised or entitled as tenants in common of or to the manors or lordships and other hereditaments hereinafter particularly mentioned or referred to, with their rights, members, and appurtenances, the said A. B. and C. D. being seised of or entitled to one equal undivided moiety or half-part of the same premises as tenants in common, in equal shares in fee-simple, subject to the following annuities, (that is to say), [*short specifica-*

Recital of the lessors being seised in fee, (subject to annuities) as tenants in common of one moiety of the estate; and of the lessee's being seised of the other moiety for his life.

(*a*) The covenants and clauses in this lease are very generally worded, it being the intention of the parties that the lessee should have great latitude as to the management of the property. More precise stipulations as to management will be found, supra, p. 54, et seq.

Apportionment of rent in respect of time.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

tion of the annuities], the said several annuities being for the lives of the several persons respectively entitled thereto, and being payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, and being secured by a term of 1,000 years, limited in the hereinbefore-mentioned equal undivided moiety or half part of the premises aforesaid, and the said E. F. is seised of or entitled to the other equal undivided moiety or half-part of the same premises for his life: AND WHEREAS the said A. B. and C. D. have agreed to grant to the said E. F. a lease of their said equal undivided moiety or half part of the aforesaid manors or lordships and other hereditaments, for the term, and upon, subject to, and under the covenants, conditions, and agreements hereinafter contained: AND WHEREAS certain lands and hereditaments, situate in the several counties of —— and ——, of or to which the said A. B. and C. D., and the said E. F., were seised or entitled for the same estates and interests as they are hereinbefore mentioned to be seised of or entitled to in the said manors or lordships and other hereditaments hereinafter particularly mentioned or referred to, were lately sold, and one moiety of the purchase-money of such lands and hereditaments was received by ——, as trustee of a power of sale, by virtue whereof, such sale, so far as respects the moiety of or to which the said E. F. was seised or entitled for his life, of such premises was effected, and the other moiety of such purchase-money was received by —— and ——, as trustees of a power of sale, by virtue whereof, such sale, so far as respects the moiety of or to which the said A. B. and C. D. were seised or entitled, of such premises was effected; and £6,000, part of the last-mentioned moiety of the said purchase-money, has been invested by the said —— and —— on mortgage of the lands and hereditaments in the parish of ——, in the county of ——, hereinafter particularly mentioned or referred to: AND WHEREAS the said E. F., and the said A. B. and C. D., have agreed to enter into the covenants and agreements hereinafter contained as to the said sum of £6,000, and as to the residue of the said moiety received by the said —— and —— of the said purchase-money, and as to the

—of agreement for the lease;

—of the origin of a sum of money applicable to the purchase of lands to be settled;

—of agreements that certain covenants shall be entered into with respect to such money, and the

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

lands and hereditaments to be purchased with the same sum and residue respectively, or any part thereof respectively: NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the said agreement in this behalf, and in consideration of the yearly rents, covenants, and agreements hereinafter reserved and contained, and on the part of the said E. F. and his assigns to be paid and performed, they the said A. B. and C. D., according to their several and respective estates and interests, Have, and each of them hath granted, bargained, sold, demised, and leased, and by these presents do, and each of them doth, grant, bargain, sell, demise, and lease unto the said E. F. and his assigns, ALL THAT equal one undivided moiety or half-part or share of them the said A. B. and C. D. of and in all and singular the manors or lordships, or reputed manors or lordships, capital and other messuages, farms, lands, and other hereditaments particularized and comprised in the schedule hereunder written, or hereunto annexed, and of and in &c., [*general words*], and all the estate, &c.: TO HAVE AND TO HOLD the said equal undivided moiety or half-part or share, hereby demised, of and in the said manors or lordships, or reputed manors or lordships, and other hereditaments, and of and in their rights, members, and appurtenances, (subject, nevertheless, and charged and chargeable to and with the payment of the said several annuities hereinbefore specified, so long as the same shall respectively be payable), unto the said E. F. and his assigns, from the 11th day of October last past, for the term of ninety-nine years, if they the said E. F., A. B., and C. D., shall all so long live: YIELDING AND PAYING therefore, yearly and every year during the said term of ninety-nine years, determinable as aforesaid, the yearly rent or sum of £——, to be paid on the 10th day of April and the 10th day of October in every year, by equal portions, without any deduction or abatement for or on account of the existing or future land-tax or sewers' rate, or any other existing or future taxes, rates, assessments, quit-rents, payments, or outgoings whatsoever, the first of such half-yearly payments to be made on the 10th day of October next ensuing, if all of them the said E. F., A. B.,

Land to be purchased therewith.

Witnesseth.

Demise.

Parcels.

Habendum for a term if the lessors and lessee shall so long live.

Reddendum.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

and C. D. shall be then living: AND YIELDING AND PAYING in the event of the determination of the said term of ninety-nine years, determinable as aforesaid, by reason of the decease of any one of them, the said E. F., A. B., and C. D., on any other day than one of the said half-yearly days of payment, a proportional part of the said yearly rent, for so much of the current half-year as shall have elapsed before such determination (*b*): PROVIDED ALWAYS, that it shall be lawful for the said E. F. and his assigns, from time to time, to retain and deduct out of the rent hereinbefore reserved, all payments which shall from time to time become payable and be made by him and them in respect of any of the said several annuities: AND THE SAID E. F. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B. and C. D., and each of them, their and each of their heirs, executors, administrators, and assigns, in manner following: that is to say, THAT he the said E. F. and his assigns shall and will, during the said term of ninety-nine years, determinable as aforesaid, well and truly pay or cause to be paid unto the said A. B. and C. D. the said yearly rent hereinbefore reserved, on the said half-yearly days of payment thereof, and in manner hereinbefore mentioned for the payment thereof, according to the true intent and meaning of these presents: AND ALSO shall and will, in the event of the determination of the said term of ninety-nine years, determinable as aforesaid by reason of the decease of any one of them, the said E. F., A. B., and C. D., on any other day than one of the said half-yearly days of payment, immediately thereupon well and truly pay or cause to be paid unto the said A. B. and C. D., or

Farther reddendum of a proportionate rent, if lease shall expire in a current half-year.

Proviso that lessee may deduct any of the annuities paid by him out of the rent;

—covenant by lessee for payment of the rent;

—and the proportionate part if it become payable;

Apportionment of rent in respect of time.

(*b*) The subject of the apportionment of rent, in point of time, is one of great importance and frequent occurrence. The limits of the present work do not allow sufficient space for its discussion; but the valuable note of Mr. Swanston (1 Swanst. 336) will furnish the reader with ample information on the subject, and with the references to all the earlier cases. The subsequent cases of *Norris* v. *Harrison*, 2 Madd. 268, and *Symons* v. *Powell*, 6 Madd. 207, and the very important statute of the 4 & 5 Will. 4, c. 22, (ante, Vol. 1, p. 269), should also be consulted.

to the survivor of them, and the executors or administrators of the one who shall have died, a proportionate part of the said yearly rent, for so much of the current half-year as shall have elapsed before such determination, according to the true intent and meaning of these presents: AND ALSO shall and will bear, pay, and discharge all land-tax, sewers' rate, and all manner of other taxes, rates, assessments, quit-rents, payments, and outgoings whatsoever, either already taxed, assessed, imposed, or payable, or hereafter, during the continuance of the said term of ninety-nine years, determinable as aforesaid, to be taxed, assessed, imposed, or become payable on the said yearly rent hereby reserved or any part thereof, or on the said hereby demised premises or any part thereof, or on the landlord or landlords thereof, by authority of Parliament or otherwise howsoever: AND ALSO shall and will, during the said term of ninety-nine years, determinable as aforesaid, well and truly pay, or cause to be paid, the said several annuities of £——, £——, £——, and £——, or such of them as shall for the time being be payable, when and as the same respectively shall become payable: AND ALSO shall and will, from time to time and at all times during the said term of ninety-nine years, determinable as aforesaid, well and truly observe, perform, fulfil, and keep all covenants and agreements which have already been entered into with any of the present tenants or occupiers of any of the said demised premises, or in relation to such premises respectively, and on the part of the landlords or landlord to be observed, performed, fulfilled, or kept, during such term, or any part or parts thereof: AND FURTHER, THAT he the said E. F. and his assigns shall and will, at his or their costs and charges, from time to time and at all times during the continuance of the said term of ninety-nine years, determinable as aforesaid, when and so often as occasion shall require, and whether any notice for that purpose shall be given or not, well and substantially repair, amend, support, maintain, sustain, paint, cleanse, scour, preserve, and keep the said messuages or tenements, farms, lands, and hereditaments, and all and singular other the premises hereby demised, and all the gates, stiles, bars, pales, posts,

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

—and to pay taxes and outgoings;

—and to pay the annuities;

—and keep and perform existing engagements with tenants;

—and keep the premises in repair;

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

rails, bridges, hedges, ditches, drains, wells, banks, watercourses, grips, and fences, of and belonging to the said demised premises, or any part or parts thereof, damage by fire, storm or tempest, or other inevitable accident to the same premises (other than the hereditaments hereinafter covenanted to be insured) only excepted: AND ALSO shall and will, at all times during the said term of ninety-nine years, determinable as aforesaid, cultivate, till, keep up, and manage, or cause and procure to be cultivated, tilled, kept up, and managed, in a proper and husband-like manner, and according to the nature thereof respectively, all the lands, one moiety whereof is hereby demised: AND ALSO shall and will, at all times during the said term of ninety-nine years, keep the pleasure grounds, orchards, gardens, hothouses, and greenhouses attached to —— [*the mansion-house*] aforesaid, properly stocked, planted, weeded, gravelled, rolled, cleansed, and preserved, and well and sufficiently improve, rail up, prune, and preserve all the flowers, shrubs, fruit-trees, plants, vines, and other trees now growing or hereafter to be growing on the said pleasure grounds, orchards, gardens, hothouses, and greenhouses; and, as often as the same or any of them shall die or decay, sow, set, and plant others in their places, of a good or better sort, and also keep such of the ponds in the premises hereby demised as are now stocked with fish, properly stocked therewith: AND THE SAID A. B. and C. D. do hereby grant and agree to and with the said E. F. and his assigns, that it shall be lawful for the said E. F. and his assigns, from time to time and at all seasonable times in the year during the term hereby granted, to fell and cut down the underwood in all woods or wood grounds hereby demised, when of proper and sufficient growth, in regular and proper rotation, and according to the custom of the country: AND ALSO from time to time to thin the young woods and wood grounds and plantations hereby demised, when and so often as the same ought to be thinned, having regard to the raising and growth of timber in the said young woods and wood grounds and plantations: AND ALSO to fell and cut down, in the usual course, all timber and other trees growing on the said demised premises, or

—and manage or cause the lands to be managed in a husbandlike manner;

—and keep the pleasure grounds in good order.

Covenant by the lessors that lessee may cut underwood in due succession;

—and thin plantations;

—and cut timber not ornamental;

any part thereof, except such timber or other trees as shall be ornamental: AND ALL THE underwoods, cuttings, poles, thinnings, timber, and other trees, which upon such falls and cuttings of underwood, and thinning, and cutting, and felling of timber or other trees, shall be felled or cut down, to make use of for repairs, or to carry away and dispose of for his and their own benefit, without any let or interruption of the said A. B. and C. D., or their respective assigns: AND THE SAID E. F. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B. and C. D., their heirs and assigns, that he the said E. F. and his assigns, as often as he or they shall cut down underwood in any of the said woods and wood-grounds, shall, besides the timber trees and standards and stocks which shall have been left on former falls to grow for timber, leave a sufficient number of other young trees or shoots best suited for standards and stocks upon each acre, and so in proportion for any quantity less than an acre of underwood, so to be cut down according to the custom of the country: AND FURTHER, THAT when and so often as he or they shall thin any of the said young woods or wood-grounds or plantations, such thinnings shall be made in a proper manner, having regard to the raising and growth of timber in the said young woods and wood-grounds and plantations: AND FURTHER, THAT when he the said E. F. or his assigns shall fell or cut down any timber or other trees, he or they shall and will, as soon afterwards as practicable, and as the seasons will allow, set or sow, or preserve and keep, on the same land or some other convenient part or parts of the said demised premises, young trees, saplings, shoots, seeds, seedlings, acorns, beech-mast, or ash keys, sufficient to insure the replacing of the timber or timber-like trees which shall have been cut down or fallen: AND FURTHER, THAT he the said E. F. or his assigns shall not nor will, at any time during the said term of ninety-nine years, determinable as aforesaid, fell or cut down on any part of the said demised premises any ornamental timber or other ornamental trees: AND FURTHER, THAT he the said E. F. and his assigns shall and will from time to time, during the said term of

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

—and to use and dispose of the underwood, thinnings, and cuttings.

Covenants by the lessee, in cutting underwood, to leave a sufficient number of young trees for standards;

—and to make thinnings properly;

—and to plant and sow to replace timber cut down;

—and not to cut down ornamental timber;

—and to protect woods and trees from injury by cattle;

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

ninety-nine years determinable as aforesaid, well and sufficiently hedge, ditch, fence, rail, and secure the said woods and wood grounds and plantations, and all scattered and ornamental timber and other trees, so that the same may be preserved and kept from damage or spoil by cattle or otherwise: AND FURTHER, THAT he the said E. F. or his assigns shall and will, at the end or other sooner determination of the said term of ninety-nine years determinable as aforesaid, deliver up to the said A. B. and C. D. all the said demised premises so well and sufficiently repaired, amended, supported, maintained, sustained, painted, cultivated, tilled, kept up, stocked, planted, weeded, gravelled, rolled, and preserved, and with all gates, stiles, bars, pales, posts, rails, bridges, hedges, ditches, drains, wells, banks, watercourses, grips, and fences, so well and substantially repaired, amended, supported, maintained, sustained, painted, cleansed, scoured, preserved, and kept up as aforesaid; damage by fire, storm or tempest, or other inevitable accident to the same premises respectively, other than aforesaid, only excepted: AND ALSO shall and will permit and suffer the said A. B. and C. D., respectively, and their respective assigns, agents, servants, and workmen, at all seasonable times during the term hereby granted, to enter into and upon the said hereby demised premises, and every or any part thereof, there to view the same and to take account of the state and condition of the said hereditaments and premises, and of the same or any part thereof not being in such state or condition as they then ought to be, to give notice to the said E. F. or his assigns, requiring him or them to make good the same within three calendar months next after every such notice, within which time, he the said E. F. or his assigns will make good the same accordingly (*c*): AND ALSO, THAT the said E. F. and his

—and to deliver up the premises at the end of the term;

—and that lessor may enter and inspect, and give notice of defaults, on which lessee shall make them good;

—that lessee

Covenant to repair, and yield up in repair;

(*c*) With respect to the obligation imposed by general covenants to repair, and yield up at the expiration of the term, and by what acts such covenants are broken, see *Lant* v. *Norris*, 1 Burr. 287; *Evelyn* v. *Raddish*, 7 Taunt. 411; *Luxmore* v. *Robson*, 1 B. & Ald. 584; *Doe* d. *Dalton* v. *Jones*, 4 B. & Ad. 126; S. C. 1 Nev. & Man. 6; *Woods* v. *Pope*, 1 Bing. N. C. 467; S. C. 1 Scott, 536; 6 Car. & Pay.

assigns shall and will, at his and their own costs and charges, immediately insure or cause to be insured, and at all times afterwards during the said term of ninety-nine years determinable as aforesaid keep insured, from loss or damage by fire in the —— insurance office, or some other public office in London or Westminster for insurance against loss by fire, the said capital messuage or tenement of ——, and the erections and buildings thereto belonging, to the full amount of the value of the said messuage or

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

will insure mansion-house;

783; *Stanley* v. *Towgood*, 3 Bing. N. C. 4; *Mantz* v. *Goring*, 4 Bing. N. C. 451; *Johnson* v. *St. Peters*, 6 Nev. & Man. 106; *Doe* d. *Wetherell* v. *Bird*, 6 Car. & Pay. 195.

—general, how affected by a covenant to repair on notice.

In framing the general covenant to repair, and the covenant (also usually contained in leases) to repair within three months' after notice from the lessor, care must be taken to keep the covenants distinct, so as to impose on the tenant the obligation to repair, without any notice, as well as after notice. This point is, however, sometimes overlooked, or not aptly guarded against. Thus, a covenant was framed for the lessee to repair at all times, when, where, and as often as occasion should require, during the term, and at furthest, within three months after notice of want of reparation; and it was held that this was one entire covenant, and could not be stated as an absolute covenant to repair, without alleging a notice to have been given of the want of reparation. (*Horsefall* v. *Testar*, 7 Taunt. 385; S. C. 1 J. B. Moore, 89). On the other hand, where there was a covenant to repair during the term, when, where, and as often as occasion should require, and to yield up the premises in repair at the expiration of the term, and a subsequent covenant to repair within six months after notice by the lessor, it was held that the lessor might sustain an action against the lessee for leaving the premises out of repair, at the expiration of the term, without having given six months notice to repair. (*Wood* v. *Day*, 7 Taunt. 646; S. C. 1 J. B. Moore, 389; see, too, *Harflet* v. *Butcher*, Cro. Jac. 644; *Doe* d. *Morecraft* v. *Meux*, 4 B. & C. 606; S. C. 7 Dow. & Ry. 98; S. C. 1 Car. & Pay. 346).

With regard to the question, whether giving a notice to repair waives a forfeiture incurred by breach of the general covenant to repair, see *Roe* d. *Goatly* v. *Paine*, 2 Camp. 520; *Doe* d. *Morecraft* v. *Meux*, ubi supra.

Specific performance of, and relief against covenants to repair;

A court of equity will not decree a specific performance of a covenant to repair; (*Mosely* v. *Virgin*, 3 Ves. 184); nor can the tenant have any relief against a forfeiture for breach of such a covenant. (*Hill* v. *Barclay*, 18 Ves. 56; *Doe* d. *Mayhew* v. *Asby*, 2 Per. & Dav. 302).

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

tenements and buildings; AND SHALL and will from time to time, when required, produce and shew to the said A. B. and C. D. or either of them, their or either of their assigns, or their or his agents or agent, the receipt or receipts acknowledging the payment of the premium or premiums or payments for such insurance: AND THAT all monies which shall be received from time to time for or in respect of any such insurance as aforesaid, shall be forthwith applied and laid out in or towards the re-building the said messuage or tenement, erections, and buildings, or in repairing all such damages as shall or may happen thereto by fire or by reason or means thereof, and that such re-building and repairing shall be done under the inspection as well of the said A. B. and C. D. respectively, or their respective heirs or assigns, as of the said E. F., or his executors, administrators, or assigns (*d*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid on the 30th day next after any of the days on which the same ought to be paid, or if the said E. F. and his assigns shall not well and truly observe, perform, fulfil, and keep all and every the covenants, clauses, conditions, and agreements hereinbefore contained, and which on his and their parts are and ought to be observed, performed, fulfilled, and kept, then, and in every or any of the said cases, it shall be lawful for the said A. B. and C. D., or either of them, their or either of their assigns, into all or any part of the said premises hereby demised in the name of the whole to re-enter, and the same to have again and re-possess as in their or his former estates or estate, and the said E. F. and his assigns, and all other occupiers of the same premises, thereout and from thence utterly to expel, put out, and amove, anything hereinbefore contained to the contrary thereof in anywise not-

—and produce the policies and the receipts for the premiums;

—and that insurance monies shall be laid out in re-building.

Proviso for re-entry.

(*d*) With respect to insurance against fire, vide supra, p. 104, n. (*f*). In the present case, it is assumed that the lessee will insure his own moiety of the mansion-house; there would, indeed, have been considerable difficulty in providing for the insurance of the demised moiety alone.

withstanding: AND EACH OF THEM the said A. B. and C. D., so far as relates to the undivided fourth part or share claimed by him of and in the said manors or lordships and other hereditaments, doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, that he the said E. F. and his assigns, well and truly paying the said yearly rents hereby reserved, and observing, performing, fulfilling, and keeping the said several covenants, conditions, and agreements hereinbefore contained, and on the part of the said E. F. and his assigns to be observed, performed, fulfilled, and kept, shall and may, at all times during the said term of ninety-nine years determinable as aforesaid, peaceably and quietly have, hold, use, occupy, and enjoy the said demised premises and every part thereof, without any lawful let, suit, eviction, interruption, disturbance (*e*), claim, or demand, by them the said A. B.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

Covenant by the lessors for quiet enjoyment;

(*e*) Some general remarks on the covenant for quiet enjoyment, will be found supra, p. 40, n. (*k*).

Lessee's right in respect of the manner in which adjoining property of the lessor is to be used.

It may deserve consideration, whether, under the covenant for quiet enjoyment, the lessor might not be prevented from doing any act to disturb the lessee in the convenient enjoyment of the premises, in such manner as he stipulates that he will use them. As, for instance, if the lessee covenants to use the premises solely as a dwelling-house, whether the erection, by the lessor, on the adjoining land (assuming it to belong to him) of a brick-kiln, or a lime-kiln, would not be a breach of the lessor's covenant that the lessee should quietly enjoy without disturbance by the lessor. And apparently, such should be the construction of the covenant to give "disturbance," a meaning distinct from "eviction" and "interruption." There are some cases in which the right of the lessee to restrain the lessor from doing certain acts on the adjoining land has come under review. It has been decided that the mere exhibition, on the treaty for a lease, of a plan of the property, part of which the lessee takes, does not give the lessee a right to say that all the other part of the property exhibited upon such plan shall continue, during his lease, in the same state in which it was exhibited on the plan, or if it was not at the time in such state, shall be made to assume such state, and to have the assistance of a court of equity to enforce such right,—the lease granted to such lessee being wholly silent as to any provision for the purpose, and there being no evidence of any fraud, mistake, omission, or misapprehension in the framing of the lease. (*The Feoffees of Heriot's Hospital* v. *Gibson*, 2 Dow, 301; *Squire* v. *Campbell*, 1 My. & Cra.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

and C. D. respectively, or by any person or persons lawfully or equitably claiming or to claim by, from, or under them respectively, except the present tenants from year to year of such of the said demised premises as are let, and the present tenant of a public-house, with the appurtenances at —— aforesaid, to whom such public-house has been leased by the said E. F., A. B., and C. D., for a term of twenty-one years from the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said yearly rent hereinbefore reserved, and of the covenants and agreements hereinbefore contained, and on the part of the said E. F. and his assigns to be performed, each of them the said A. B. and C. D., according only to his present and future estate and interest, doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, that, during the said term of ninety-nine years, determinable as aforesaid, it shall be lawful for the said E. F. and his assigns to have, receive, and take, to his and their own use, all interest which during the same term shall become due in respect of the said sum of £6,000, and the said residue of the said moiety, so as aforesaid received by the said —— and —— of the said purchase-money, and also all dividends, interest, and annual income, which shall arise or be produced from or by the stocks, funds, or securities, in or upon which the the same sum and residue, or any part thereof respectively, shall for the time being be laid out or invested: AND ALSO, THAT in case at any time during the said term of ninety-nine years determinable as aforesaid, all or any part of the

—with exceptions of certain tenancies.

Witnesseth, further, covenant by the lessors that lessee may receive, during the term, the interest of the monies mentioned;

—and that if lands are purchased, the lessee may hold

459). But if an agreement that the part of the property not taken by the lessee shall be used only for a particular purpose, can be established, the lessee may have such agreement enforced by injunction; (*Rankin* v. *Huskisson*, 4 Sim. 13); and if a plan were referred to in the lease, or the property were therein described as of a particular kind, (a street or garden for example), it might be a question whether the part not taken by the lessee must not be made and kept in the state indicated. (See 1 My. & Cra. 475, 476, and *Rankin* v. *Huskisson*, ubi supra).

said sum of £6,000, or of the said residue, or of any monies arising therefrom respectively, shall be laid out in the purchase of lands or hereditaments, then and in such case, the lands and hereditaments which shall be so purchased shall be held and enjoyed by the said E. F. and his assigns, during the same term, in like manner and in all respects as the said premises hereinbefore demised are to be held by him and them under or by virtue of these presents: AND THE SAID E. F. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B. and C. D., their executors, administrators, and assigns, and each of them the said A. B. and C. D., according only to his present and future estate and interest, doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, that so far as the circumstances of the case and the nature of the lands and hereditaments so purchased will permit, the several covenants, provisoes, conditions, and agreements hereinbefore contained shall be applicable to the lands and hereditaments purchased, and these presents shall be construed as if such lands and hereditaments formed part of the premises hereinbefore demised, and the said A. B. and C. D., and their respective executors, administrators, and assigns, shall have all such and the same powers and remedies for the recovery of the said yearly rent hereby reserved, by distress and otherwise, as to the lands and hereditaments so to be purchased, as they would have had in case the same lands and hereditaments had been hereby demised: AND FURTHER, THAT the same several persons shall and will, upon the request of the other or others of the same persons, but at the costs and charges of the person or persons making such request, make, do, and execute, all and every such further and other acts, deeds, demises, and assurances, as by the person or persons making such request, or his or their counsel learned in the law, shall be reasonably devised or advised and required, for the further and better and more perfectly demising or assuring the said premises hereby demised, and the lands and hereditaments so to be purchased as aforesaid, to the said E. F., his executors, administrators,

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

them as part of the demised lands.

Covenants by lessee and lessors that if lands be purchased, they shall be held as if demised by the present lease;

—and for further assurance as to the premises demised, and to be demised.

OF AN UNDIVIDED MOIETY TO THE CO-TENANT.

and assigns, in manner aforesaid, or otherwise for the better and more perfectly carrying into effect the several covenants, conditions, provisoes, and agreements hereinbefore contained, or any of them. IN WITNESS &c.

THE SCHEDULE referred to in the above-written Indenture.

IX.

SLATE QUARRIES.

LEASE *of* SLATE QUARRIES *by a* MORTGAGEE, *and his* TRUSTEE, *and the* MORTGAGOR (*a*), *who is* TENANT *for* LIFE, *with* POWER *of* LEASING. RESERVATION *of* DIFFERENT RENTS, *for different Years, and for different Sorts of Slate: the* RENTS *being regulated beyond a certain Amount by the* QUANTITIES *of Slate* SOLD, *but to be paid on a* GIVEN QUANTITY *in each Year, whether sold or not.* SPECIAL COVENANTS *for ascertaining the* AMOUNT *of* RENT. LESSORS *to have the* OPTION *of purchasing* PLANT *at the end of the Term.* LESSEES *to be exempt from* TOLLS,—*to have Power to* DETERMINE *the Term at the* END *of* ANY YEAR,—*and to pay their* RENT *by* BILLS *of Exchange on* LONDON. USUAL COVENANTS *and Clauses as to Working, &c.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*trustee for mortgagee*], of the first part; C. D., of &c., [*mortgagee*], of the second part; E. F., of &c., [*mortgagor, tenant for life, with power of leasing*], of the third part; and G. H. and I. K., of &c., [*lessees*], of the fourth part: WITNESSETH, that, in consideration of the rents and royalties hereinafter reserved, and of the covenants,

Witnesseth.
Consideration.

(*a*) With respect to leases by mortgagor and mortgagee, see ante, Vol. 3, p. 492.

SLATE QUARRIES.

conditions, and agreements hereinafter contained on the part of the said G. H. and I. K., their executors, administrators, or assigns, to be observed and performed, He the said A. B., at the request and by the direction as well of the said C. D. as of the said E. F., (testified by their respectively being parties to and executing these presents), hath demised, leased, and to farm letten, and by these presents doth demise, lease, and to farm let, and the said C. D., at the request and by the direction of the said E. F., (testified as aforesaid), hath demised, leased, and to farm letten, and by these presents doth demise, lease, and to farm let, and the said E. F. hath granted, demised, leased, to farm letten, and confirmed, and pursuant to, and by force and virtue, and in exercise and execution of every power or authority in anywise enabling him in this behalf, doth by this present indenture, sealed and delivered by him in the presence of the two credible persons whose names are intended to be indorsed upon these presents as witnesses, attesting the sealing and delivering of these presents by the said E. F., limit and appoint, and also grant, demise, lease, to farm let, and confirm unto the said G. H. and I. K., their executors, administrators, and assigns, ALL AND SINGULAR the slate, and quarries or beds of slate, in, upon, or under the lands of [*parcels*], TOGETHER with all and singular houses, sheds, warehouses, cottages, edifices, buildings, erections, heap-room, pit-room, store-room, yards, lands, rights, members, appurtenances, and incidents whatsoever, to the said slate, and quarries or beds of slate, in anywise belonging or appertaining, or to or with the same held, occupied, or enjoyed, or taken or known as part, parcel, or member thereof: AND TOGETHER ALSO with full and free liberty and power for the said G. H. and I. K., their executors, administrators, and assigns, to use the present, and dig, sink, drive, and make new and other pits, shafts, levels, pools, dams, embankments, drains, water-courses, and other works, for better and more conveniently working the said slate, and quarries and beds of slate; and to use and repair the present, and to make and from time to time repair any new or other roads or ways, in, upon, over, and

Demise.

Parcels.

General words.

Rights of mining.

SLATE QUARRIES.

along any of the lands [comprised within the limits hereinbefore mentioned (*b*),] and to take, make, erect, and build new or other houses, sheds, warehouses, cottages, edifices, buildings, gins, engines, pumps, erections, heap-room, pit-room, and store-room, and generally to make, do, perform, and execute all and every or any other acts, matters, and things whatsoever, necessary or expedient and convenient for the well and effectually digging for, winning, working, getting, dressing, making marketable, and carrying away all and singular the slate hereinbefore demised, or expressed and intended so to be, or any part thereof, SAVE AND EXCEPT, that no shaft, pit, or quarry, engine-work, or building whatsoever, shall be dug, sunk, opened, made, or erected within fifty yards of any messuage or dwelling-house of or belonging to any person whomsoever, without the consent in writing first had and obtained, either of the said A. B., his heirs or assigns, or of the said E. F., or other the person or persons for the time being entitled to the reversion of the premises hereinbefore demised, or expressed and intended so to be: TO HAVE, HOLD, USE, EXERCISE, AND ENJOY the said slate, and quarries or beds of slate, powers, privileges, and authorities, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said G. H. and I. K., their executors, administrators, and assigns, from the —— day of ——, for the term of —— years, YIELDING AND PAYING therefore, during the first year of the term hereby granted, the certain rent or sum of —— for every ton of one thousand tons of slate, (other than roofing slate), whether such number of one thousand tons shall during such first year be actually gotten, and sold or disposed of, or not, and for all and singular the slate (other than roofing slate) which shall during such first year be actually gotten, and sold or disposed of, over and above the number of one thousand tons, the rents or sums following: (that is to say), for every ton of such slate over and above the said number of one thousand tons, and not exceeding the

Exception.

Habendum.

Reddendum for the first year on common slate.

(*b*) In most cases the reference would be to the lands "hereinbefore particularly described."

further number of one thousand tons, the sum of ——, and for every ton of such slate over and above the number of two thousand tons, and not exceeding the further number of one thousand tons, the sum of ——, and for every ton of such slate over and above the number of three thousand tons, the sum of ——: AND YIELDING AND PAYING therefore, during the second year of the term hereby granted, the certain rent or sum of —— for every ton of one thousand tons of slate, (other than roofing slate), and —— for every ton of five hundred other tons of slate, (other than roofing slate), whether such numbers of one thousand tons and five hundred tons (making together one thousand five hundred tons) shall during such second year be actually gotten, and sold or disposed of, or not, and for all and singular the slate (other than roofing slate) which shall during such second year be actually gotten, and sold or disposed of, over and above the said number of one thousand five hundred tons, the rents or sums following: that is to say, for every ton of such slate over and above the said number of one thousand five hundred tons, and not exceeding the further number of five hundred tons, the sum of ——, and for every ton of such slate over and above the number of two thousand tons, and not exceeding the further number of one thousand tons, the sum of ——, and for every ton of such slate over and above the number of three thousand tons, the sum of ——: AND YIELDING AND PAYING yearly, and every year during the residue of the said term, the certain rent or sum of ——, for every ton of one thousand tons of slate, (other than roofing slate), and —— for every ton of one thousand other tons of slate, (other than roofing slate), whether such numbers of one thousand tons and one thousand tons (making together two thousand tons) shall be actually gotten, and sold or disposed of, or not, during each year of the residue of the said term, and for all and singular the slate (other than roofing slate) which shall yearly and every year of the residue of the said term be actually gotten, and sold or disposed of, over and above the said number of two thousand tons, and not exceeding the further number of

SLATE QUARRIES.

Reddendum for the second year on common slate.

Reddendum for other years on common slate.

SLATE QUARRIES.

one thousand tons, the sum of ——, and for every ton of such slate over and above the number of three thousand tons, the sum of ——: AND ALSO YIELDING AND PAYING yearly, and every year during the whole of the said term hereby granted, over and above the said rents hereinbefore reserved, such further rent or rents, sum or sums of money, as shall be equal to one eighth part in value of all the roofing slate which shall in each such year be actually gotten, and sold or disposed of; the value of all such roofing slate to be taken at and accounted for according to the actual price or prices for which such slate shall be sold at —— aforesaid: THE SAID several rents, or sums of money hereinbefore reserved, to be paid free and clear of and from all existing and future land-tax, sewers' rates, and other taxes, charges, rates, assessments, impositions, payments, and outgoings whatsoever, and on the days following: (that is to say,) on all such and so much of the said roofing and other slate, in respect of which any of the rents, or sums of money aforesaid, shall become payable, as shall be actually shipped at the Port of ——, on the days on which the same shall be so shipped as aforesaid, and on all such and so much of the said roofing and other slate, in respect of which any of the rents or sums of money aforesaid shall become payable, as shall not be shipped as aforesaid, on the days on which the same shall be removed from the quarries where the same shall be raised or gotten, save and except, that if in any year of the said term the number of tons of slate (other than roofing slate) actually gotten, and sold or disposed of, shall be less than the number of tons on which rents or sums of money are hereby reserved and made payable, whether actually gotten, and sold or disposed of or not, then and in every such case, the rents or sums of money so reserved and made payable, and which shall not have been previously paid, in respect of slate actually gotten and sold, or disposed of, shall be paid on the last day of the year for which the same shall have been so reserved and made payable, AND THE SAID G. H. and I. K. do hereby for themselves, their heirs, executors, and administrators, and each of them doth hereby for himself,

Reddendum on roofing slate.

Rents to be paid in manner, and at times specified.

Covenants by lessees for payment of rents;

his heirs, executors, and administrators (*c*), covenant with the said A. B., his heirs and assigns (*d*), in manner following: (that is to say), that they the said G. H. and I. K., or one of them, their or one of their executors, administrators, or assigns, shall and will from time to time, during the said term hereby granted, pay or cause to be paid unto the said A. B., his heirs or assigns, the said several rents and sums of money hereinbefore reserved, at the times when the same shall respectively become due and payable, and in the manner hereinbefore mentioned and appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents: AND FURTHER, that if the several rents or sums of money hereby reserved and made payable, or any of them, or any part of any of them, shall be behind and unpaid by the space of twenty-one days next over or after any of the days whereon the same ought to be paid as aforesaid, (and whether the same shall have been demanded or not), then and in every such case, it shall be lawful for the said A. B., his heirs or assigns, to stop and hinder the

SLATE QUARRIES.

—and that, on default, lessors may distrain;

(*c*) In this case the lessees are made to covenant jointly and severally, and this seems to be correct; for although they are joint tenants of the legal estate, yet as they are partners in trade, the beneficial interest in the share of the one first dying will belong to his representatives, and the legal interest only will remain in the survivor. If the lessees, however, are joint tenants, in equity, as well as at law, it seems that the covenants should be joint only; for, otherwise, the representatives of the tenant first dying would remain liable on the several covenants when they had ceased to have any interest in the estate. (See *Enys* v. *Donithorne*, 2 Burr. 1190). It is of course for the lessor's interest that the covenants should be both joint and several in all cases, as he then has not merely the covenant of the survivor for his security, but also the covenant of the one first dying, as a surety for the survivor.

(*d*) The covenants by the lessees must be entered into with the mortgagee, as having the legal estate, for otherwise the covenants will be covenants in gross, and not covenants running with the land, so as to be available to the mortgagee and his assigns. (*Webb* v. *Russell*, 3 T. R. 323; *Stokes* v. *Russell*, Id. 378; *Russell* v. *Stokes*, 1 H. Bl. 362; *Whitton* v. *Peacock*, 2 Bing. N. C. 411; S. C. 3 My. & Ke. 325).

SLATE QUARRIES.

taking away of slate from the said quarries and beds of slate and premises hereby demised, or expressed and intended so to be, and also to enter into and upon all and every the said quarries or beds of slate, and other the premises hereby demised, or expressed and intended so to be, and to seize and distrain all or any machinery, engines, implements, plant, utensils, horses, carts, carriages, or other live or dead stock, and all the slate which shall be remaining upon or within the limits or boundaries of the premises hereby demised, or any of them, or any part thereof, and the same to impound, sell, and dispose of, for and towards the satisfaction and payment of all such rents, reservations, and sums of money, of which such default shall have been made in payment as aforesaid, and also of all such costs, charges, damages, and expenses, incident to or occasioned by such distress or distresses, in the like and as full and ample manner and form as any rent whatsoever can or may be recovered by law: AND ALSO, THAT the said G. H. and I. K., or one of them, their or one of their executors, administrators, or assigns, shall and will, during the said term hereby granted, bear, pay, and discharge all existing and future land-tax, sewers' rate, and other taxes, charges, rates, assessments, impositions, payments, and outgoings of what nature or kind soever, in respect of the said premises hereinbefore demised, and every of them, and every part thereof: AND ALSO, THAT they the said G. H. and I. K., or one of them, their or one of their executors, administrators, or assigns, shall and will, from time to time, dress and make marketable all and singular the roofing and other slate which shall be gotten or raised under or by virtue of these presents: AND SHALL and will, from time to time, when and as any such slate (other than roofing slate) shall be about to be shipped or removed from the said premises hereby demised, fairly and openly weigh or ascertain the weight of the same, and when and as any such slate, being roofing slate, shall be about to be shipped or removed as aforesaid, fairly and openly count, weigh, measure, or otherwise ascertain the quantity, weight, and value, or actual price of the same: AND SHALL and will, of the time of every such intended shipment or removal, as

—and for payment of taxes;

—and to make marketable the slate raised;

—and value and weigh the same;

—and apprise the agent of the lessors of

SLATE QUARRIES.

well of roofing as of other slate, and of the time or times when such previous counting, weighing, measuring, or ascertaining of quantity, weight, value, or price, shall be intended to be made, give at least —— days previous notice in writing to such person as from time to time shall be appointed by the said A. B., his heirs or assigns, or by the said E. F., or by other the person or persons entitled to the reversion of the said premises, as the agent of the lessors, and shall be notified to the said G. H. and I. K., or one of them, their or one of their executors, administrators, or assigns, to have been appointed such agent, to the intent, and so that the agent to whom such notice shall for the time being be given, may be present at every or any such shipment or removal, and may be present at and check every such counting, weighing, measuring, or ascertaining of quantity, weight, value, or price: AND THAT the said G. H. and I. K., or one of them, their or one of their executors, administrators, or assigns, shall and will keep fair and legible books of account, with true, regular, and exact entries therein, of the weight of all and singular the slate (other than roofing slate) gotten or raised under or by virtue of these presents, which shall be dressed and made marketable, and of the times when the same shall be removed from the premises hereby demised, and to whom and how the same shall be sold or disposed of, and of the vessels on which and the place for which such part thereof as is shipped shall be shipped, and of the weight, measure, and quantity of all and singular the roofing slate gotten or raised under or by virtue of these presents, and which shall be dressed and made marketable, and of the times when the same shall be removed from the premises hereby demised, and of the persons to whom, and of the prices at which, and how the same shall be sold or disposed of, and of the vessels on which and the places for which such part thereof as is shipped shall be shipped; AND SHALL and will, at all times when required, produce and shew such books of account, or any of them, to the said A. B., his heirs or assigns, and to the said E. F., or other the person or persons entitled to the reversion of the said premises, and to the agent for the time being of the

the times of shipment, removal, weighing, and valuation;

—and keep books of account of the weight and value of slate, and other needful particulars;

—and produce the books;

SLATE QUARRIES.

said A. B., his heirs or assigns, or of the said E. F. or other the person or persons entitled as aforesaid, and permit and suffer him and them to take any extracts therefrom or copies thereof, and shall and will give any explanation which may be required in relation thereto: AND SHALL and will, in all other respects, give every or any other opportunity, facility, and means, to the said A. B., his heirs or assigns, and to the said E. F., or other the person or persons entitled to the reversion of the said premises, and such agent as aforesaid, to ascertain and be acquainted with the quantity and value or price of roofing slate, and the weight of other slate gotten and made marketable as aforesaid, to the end and intent that the amount of rent from time to time payable and becoming payable may be known, and shall and will join and concur in any arrangements which shall or may be reasonably devised and proposed for effecting the object last hereinbefore mentioned: AND ALSO SHALL and will, within ten days next after the last day of each year of the term hereby granted, and also at such other time or times during the said term, or within one calendar month after the expiration or determination thereof, as the said A. B., his heirs or assigns, or the said E. F. or other the person or persons for the time being entitled to the reversion of the said premises, shall by notice in writing under his or their hand or hands require the same, deliver to the said A. B., his heirs or assigns, or to the said E. F. or other the person or persons for the time being entitled to the reversion of the said premises, or to the agent for the time being of the said A. B., his heirs or assigns, or of the said E. F. or other the person or persons entitled as aforesaid, a true and fair account in writing of all and singular the roofing and other slate which shall have been gotten or raised under or by virtue of these presents, and dressed and made marketable during the preceding year, or during such time or times as shall be specified in such notice as aforesaid, stating in such account the weight of all such, and so much of the said slate as shall not have been roofing slate, and the times when the same shall have been removed from the premises hereby demised, and to whom and how the same shall have

—and do other reasonable acts for ascertaining amount of rent;

—and furnish accounts of the weight and value of slate sold;

been sold or disposed of, and of the vessels on which, and the places for which, such of the same as has been shipped shall have been shipped, and the weight, measure, and quantity of all such and so much of the said slate as shall have been roofing slate, and the times when the same shall have been removed from the premises hereby demised, and to whom and how the same shall have been sold or disposed of, and of the vessels on which, and the places for which, such part of the same as has been shipped shall have been shipped, every such account being first verified by a declaration in writing under the hands of the said G. H. and I. K. or one of them, their or one of their executors, administrators, or assigns, or of their or his agent, authorized for that purpose: AND FURTHER, THAT the said G. H. and I. K. or one of them, their or one of their executors, administrators, or assigns, shall and will at all times, at their or his own expense, repair and keep in repair all such ways, paths, and roads as shall be used by them in working the said slate quarries, or in getting and carrying away the produce thereof, or otherwise by virtue of these presents (but no others): AND SHALL and will, at all times during the said term hereby granted, fairly work the said quarries hereby demised, in the best and most approved manner of working quarries of the like nature: AND SHALL and will at all times keep and uphold the said slate quarries and premises, or such of them as for the time being can be worked with advantage, and all pits, shafts, levels, pools, dams, embankments, drains, water-courses, warehouses, cottages, buildings, erections, gins, engines, pumps, machinery, or plant, and other matters and things thereto belonging, in proper order, condition, and repair: AND THE SAME so upheld and kept in proper order, condition, and repair as aforesaid, and other the premises hereby demised, and every of them, at the end or sooner determination of the said term hereby granted, shall and will peaceably and quietly give up and surrender unto the said A. B., his heirs or assigns, or to such person or persons as he or they shall appoint to receive the same: BUT SO NEVERTHELESS, that, unless the said term of —— years shall be determined by re-entry for non-payment

SLATE QUARRIES.

—to be verified by declaration;

—and to keep roads in repair;

—and work fairly;

—and keep the quarries, &c., in good order;

—and yield up at expiration of term;

—reserving power to lessees of remov-

SLATE QUARRIES.

ing slate then raised;

of the said rents or reservations, or non-performance of the covenants in these presents contained, under the power in that behalf hereinafter contained, it shall be lawful for the said G. H. and I. K., their executors, administrators, and assigns, to possess and remove for their own use all the roofing and other slate which shall have been taken or raised by them previously to the determination of the said term hereby granted, the said G. H. and I. K., their executors, administrators, or assigns, using all reasonable despatch in removing the same, and rendering and paying forthwith the full rents and sums of money in respect thereof, according to the true intent and meaning

—and the plant, giving the lessors the option to purchase it;

of these presents: AND ALSO to possess and remove for their own use all engines or working tools, machinery, or plant, at the time being belonging to the said G. H. and I. K., their executors, administrators, or assigns, in or about the said slate quarries and premises, but not the stone or brick work, roofs or timbers belonging thereto, or used for the protection thereof, first giving to the said A. B., his heirs or assigns, and to the said E. F., or other the person or persons interested in the reversion of the premises hereby demised, the option of purchasing such engines, working tools, machinery, or plant, or any part thereof, at a fair valuation: AND ALSO, THAT it shall be lawful for the said A. B., his heirs or assigns, and for the said E. F., or other the person or persons for the time being entitled to the reversion of the premises hereinbefore demised, or expressed and intended so to be, and for his or their agent or agents, at any time or times during the continuance of the term hereby granted, to enter or descend into and upon all and singular the several quarries and beds of slate, works, and premises hereinbefore demised, or expressed and intended so to be, or any of them, and inspect the manner of working the same, and the state and condition thereof: AND IF ANY error, fault, or defect, shall be found or appear in the working or conduct of all or any part of the said quarries, buildings, works, machinery, plant, or premises, or in the state or condition thereof, that then the said G. H. and I. K., their executors, administrators, or assigns, or some or one of them, shall and will, on receiving notice to that

—and that lessors may enter and inspect quarries;

—and that lessees, on receiving notice, will make defaults good;

effect from any of the persons hereinbefore authorized to make such inspection as aforesaid, forthwith, or as soon as conveniently may be, repair, correct, and amend the same, and keep and continue the same in perfect repair and working condition, and shall and will at all times render every reasonable facility, convenience, and assistance, for making such inspection as aforesaid, unto all the persons hereinbefore authorized to make such inspection as aforesaid: AND ALSO, THAT the said G. H. and I. K., or either of them, their or either of their executors, administrators, and assigns, shall not nor will commit any unnecessary damage, spoil, or waste, in or upon the aforesaid lands and premises, or any part thereof, in the carrying on the said works, or in the exercise of the powers hereinbefore contained: AND SHALL and will fence round and fill up, level and cover in a proper substantial manner, to the satisfaction of the said A. B., his heirs or assigns, and of the said E. F., or other the person or persons for the time being entitled to the reversion of the premises hereinbefore demised, or expressed and intended so to be, all such quarries, pits, shafts, and other works as may have been wrought out, or can no longer be worked to advantage: AND SHALL and will fence round in a proper and substantial manner, and to the satisfaction of the person or persons aforesaid, all and singular the quarries, pits, shafts, works, pit-room, heap-room, store-room, yards, roads, ways, and paths whatsoever, which shall be worked or made under or by virtue of these presents; and shall and will erect and set up all such gates, posts, and other defences as shall be required for preventing cattle or other animals from trespassing on the premises aforesaid, or injuring themselves: AND SHALL and will keep in good and substantial repair all and singular the fences and erections to be erected under or by virtue of the covenants hereinbefore contained, or either of them: AND SHALL and will make reasonable and fair compensation to any tenant or tenants, occupier or occupiers, of the surface of the premises hereinbefore demised, or expressed and intended so to be, and to any other person or persons whomsoever, for any damage or loss which may be sustained by him or them by reason or in

—and that lessees will do no unnecessary damage;

—and fill up or fence round abandoned quarries;

—and fence round the quarries, &c., in use;

—and keep fences in repair;

—and make compensation for damage;

SLATE QUARRIES.

consequence of the said works, or in the execution of the powers and authorities in these presents contained, or anywise in relation thereto, or to any matter or thing which may be done in pursuance of these presents, so far as any such tenant or occupier or other person or persons shall be entitled to such compensation (*e*): AND SHALL and will save, defend, keep harmless, and indemnify the said A. B., C. D., and E. F., and every of them, their and every of their heirs and assigns, and all and every the persons or person entitled to or interested in the lands hereinbefore mentioned, from all actions, suits, claims, and demands on account of any such damage or loss as aforesaid: AND ALSO, THAT the said G. H. and I. K., their executors, administrators, or assigns, shall not nor will at any time or times transfer or assign over, grant, or underlet, or otherwise part with, to any person or persons whomsoever, the said slate quarries, pits, works, matters, and things, liberties, authorities, privileges, and premises, hereinbefore demised or expressed, and intended so to be, or any of them, or any part thereof, for the whole or any part of the said term hereby granted, without the consent and approbation in writing of the said A. B., his heirs or assigns, and of the said E. F., or other the person or persons so for the time being entitled to the reversion as aforesaid, for that purpose first had and obtained: AND IT IS HEREBY agreed and declared, that no tolls shall be taken or demanded by the said lessors or any of them, or any person claiming through or under them or any of them, from the said G. H. and I. K., their executors, administrators, or assigns, in respect of the roads or ways which they may use for the purposes of these presents (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said G. H. and

—and indemnify the lessors;

—and will not underlet or assign without consent.

Lessees to be exempt from tolls on private roads.

Power to lessees to determine the term.

(*e*) In this case most of the tenancies were subject to the right of the lessor to enter and work mines without making any compensation.

(*f*) The property forming the subject of the present lease was situate in Ireland, and, perhaps, this and some other of the provisions inserted may be inapplicable to English leases.

SLATE QUARRIES.

I. K., their executors, administrators, and assigns, at the end of any year of the said term hereby granted, to determine the same term, the said G. H. and I. K., their executors, administrators, or assigns, giving previously one year's notice of their intention so to determine the same, and paying the several rents, and observing and performing the several covenants, conditions, and agreements in these presents contained, and on the part of the said E. F. and G. H., their executors, administrators, and assigns, to be paid, observed, and performed, up to the day of the said term being so determined, and also paying to the person or persons for the time being entitled to the reversion of the said premises, the sum of £1,000 over and above the rents and sums of money which by virtue of these presents may be due and payable at the time of such determination (*g*):

Power to determine a lease; —how to be framed.

(*g*) The power to the tenant to determine the lease by notice should always be made conditional on his having paid the rent and performed the covenants up to the time of the determination, and so that the condition may be precedent to the effectual exercise of the power. (*Porter* v. *Shephard*, 6 T. R. 661). And it should be specified whether the power of determination is to be exercised both by the lessor and lessee, or by which of them alone. If an agreement be entered into to grant a lease for seven, fourteen, or twenty-one years, or if an informal lease be made in like terms, it will be considered that the lessee is entitled to, or has, a lease for the twenty-one years, determinable at his option alone, at the end of seven or fourteen years; for ambiguities in grants are to be construed in favour of the grantee. (*Dann* v. *Spurrier*, 7 Ves. 231; S. C. 3 Bos. & Pul. 399; *Doe* d. *Webb* v. *Dixon*, 9 East, 15; *Price* v. *Dyer*, 17 Ves. 356).

To whom it should be reserved, and to whom it belongs.

The lessee's power of determination should, of course, be reserved to him, his executors, administrators, or assigns; and the lessor's power should be reserved to him, his heirs or assigns, if he be seised in fee-simple, or to him, his appointees, heirs, or assigns, if he have the power of appointment, and the reversion in fee. If he be tenant for life, with a power of leasing, the power of determination may be reserved to him, and to the person or persons for the time being entitled to the possession of the premises in reversion expectant on the term. If the lessor be himself a lessee, the power should be for him, his executors, administrators, or assigns. But it seems that though the power be inaccurately reserved, and even though the assigns be not mentioned, yet that it will run with the land, both as to the reversion and the term. (See Lord Ellenborough's judgment in *Roe* d. *Bamford* v. *Hayley*, 12 East, 464). In that case there was a proviso in a

SLATE QUARRIES.

Proviso for re-entry.

PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that if it shall happen that the rents and sums of money hereinbefore reserved, or any of them, or any part thereof, shall be behind or unpaid for the space of forty days over the times when the same respectively shall have become due and

---

lease for twenty-one years, that, "if either of the said parties shall be desirous to determine this lease at the end of the first seven or fourteen years of the said term, then it shall be lawful for either of them, his executors or administrators, so to do, upon giving unto the other of them, his heirs, executors, or administrators, or leaving the same at his or their place of abode, twelve months' notice, in writing, of such his or their intention, anything herein contained to the contrary notwithstanding," and it was held that the devisee of the lessor might give the notice required. (See, too, *Simpson* v. *Clayton*, 4 Bing. N. C. 758, 780). Where the power was reserved to the parties, or their respective heirs or executors, to determine the lease on "notice in writing under his or their respective hand or hands," and the lessor died, having devised the reversion so as to vest in three persons (whom he appointed his executors) as joint tenants, and two only of these persons gave the notice, but expressed it to be on behalf of themselves and the third person, it was held that the notice was insufficient, and could not be made valid by the subsequent assent of the third person. (*Right* d. *Fisher* v. *Cuthell*, 5 East, 491; S. C. 2 Marsh. 83; 5 Esp. 149; see, too, *Goodtitle* d. *King* v. *Woodward*, 3 B. & Ald. 689; *Doe* d. *Joliffe* v. *Sybourn*, 2 Esp. 877). A lease to which the King was a party, and granted by the Commissioners of Woods and Forests, contained a clause empowering the commissioners for the time being to determine the lease by notice, and it was held that, by virtue of the statute 10 Geo. 4, c. 50, s. 92, the lease was determined by a notice signed by two only out of the three commissioners. (*Coombes* v. *Dutton*, 5 Mee. & Wels. 469).

General power only applicable to determine the lease as to all the premises.

A power to determine a lease generally can only be used to determine the lease generally of the whole premises, even although the lease contain distinct demises, at distinct rents, of different parts of the property. (*Doe Lessee of Rodd*, v. *Archer*, 14 East, 245).

Power must be strictly pursued.

The power to determine by notice must, of course, be strictly pursued: thus, if the proviso in the lease be, that a certain act done by the lessee shall be a forfeiture, if the lessor thereupon give notice to determine the lease at the end of a certain time, a notice that if the lessee do not in future observe the condition which he has broken, the lessor will determine the lease, will not be a valid notice for the purpose of determining the lease, and enabling the lessor to re-enter. (*Muskett* v. *Hill*, 5 Bing. N. C. 694).

payable in manner hereinbefore mentioned, according to the true intent and meaning of these presents, or if the said G. H. and I. K., their executors, administrators, or assigns, shall not effectually keep, observe, and perform all and every the covenants, conditions, and agreements herein contained, and on their parts to be kept, observed, and performed, then, and in either of such cases, it shall be lawful for the said A. B., his heirs or assigns, into and upon all and singular the said quarries, beds of slate, and premises hereinbefore demised, or expressed and intended so to be, or any of them, or any part thereof in the name of the whole, to re-enter, and thenceforth to repossess and enjoy the same, together with all engines, working tools, machinery, plant, slate, roofing slate, and other produce, then being on the said premises, or gotten from the said slate quarries or pits, as fully and effectually, to all intents and purposes, as if these presents had never been made: AND EACH of them, the said A. B. and C. D., so far as relates to the acts and deeds of himself, his heirs, executors, administrators, and assigns, and also the said E. F., doth hereby for himself, his heirs, executors, and administrators, covenant with the said G. H. and I. K., their executors, administrators, and assigns, that it shall be lawful for the said G. H. and I. K., their executors, administrators, and assigns, paying the several rents and sums of money hereinbefore reserved, and observing and performing the covenants, conditions, and agreements in these presents contained, and on their part to be observed and performed, from time to time and at all times during the continuance of the term hereby granted, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said quarries and beds of slate, liberties, privileges, powers, and authorities, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, without the lawful let, suit, trouble, interruption, or disturbance of the said A. B., C. D., and E. F., or any of them, their or any of their heirs, executors, administrators, or assigns, or of any other person or persons whomsoever lawfully claiming or to claim by, from, or under or in trust for them or any of them, or in anywise entitled to or interested in the reversion of the said premises: PROVIDED ALWAYS, and

SLATE QUARRIES.

Covenant by the lessors for quiet enjoyment.

Proviso that

SLATE QUARRIES.

rents may be paid by bills of exchange on London.

it is hereby declared and agreed, that the rents and sums hereinbefore reserved may be paid by bills of exchange drawn by the said G. H. and I. K., their executors, administrators, or assigns, and made payable in London at seven days after sight, either to the said E. F. or to other the person or persons for the time being beneficially entitled to the reversion of the premises hereinbefore demised, or expressed and intended so to be, such of the said bills as shall be drawn for the payment of any rents or sums of money which shall have been reserved, or have become payable in respect of slate actually shipped at the port of —— aforesaid, or any other port, to bear date respectively on the days on which such slate shall be actually shipped, and such of the said bills as shall be drawn for the payment of any rents or sums of money which shall have been reserved or become payable in respect of slate actually sold or disposed of, but not intended to be shipped, to bear date respectively on the days on which such slate shall be removed from the said premises hereby demised; and such of the said bills as shall be drawn for the payment of any rents or sums of money which shall have been reserved and become payable in respect of any slate which may not be actually shipped, or sold or disposed of, to bear date respectively on the days on which such last-mentioned rents or sums of money are hereinbefore made payable: AND IT IS HEREBY further declared and agreed, that if such bills of exchange as aforesaid, and every of them, shall be duly honoured and paid when the same shall respectively become due and payable, then and in such case the person or persons who, during the life of the said E. F., shall be entitled to such rents and sums of money, shall and will accept and take such bills in satisfaction and payment of the rents and sums of money hereinbefore reserved (*h*), and in respect

Bills, if honoured, to be taken during life of tenant for life in payment of rent.

As to the payment of rent by bills of exchange, and other peculiar methods.

(*h*) Although the rent reserved is to be paid in a peculiar manner, as in the case in the text, it should still be reserved in the usual method in the body of the lease, and the peculiar stipulations introduced by way of proviso. For the opposite course will induce the necessity of making alterations in all the clauses referring to the payment of rent, and almost precludes the parties from making the permission to pay the rent in the manner stated dependent on the due observance of the condition. In the present case, the reservation of a rent, to be

of which the same shall respectively be drawn. IN WITNESS &c. (*i*). SLATE QUARRIES.

---

paid by bills of exchange, would probably have been so contrary to the intent of the power under which the lease was granted, as to have rendered it invalid; but by limiting this mode of payment to the lifetime of the tenant for life, all danger of that nature is obviated.

(*i*) The principal cases relating to mines and minerals are briefly stated or referred to ante, Vol. 3, p. 393 et seq.; Id. p. 405, n. (*g*). The cases of *Dearden* v. *Evans*, 5 Mee. & Wels. 11, (relating to stones embedded in copyhold lands); *Harris* v. *Ryding*, Id. 60, (as to what is a *reasonable* working by a mine owner, as regards the surface owner); and *Arkwright* v. *Gell*, Id. 203, (relating to the right to an artificial stream created for mining purposes), have been reported since the publication of that volume. General law as to mines and minerals.

It is proposed in the present note to refer to the chief cases respecting leases of mines and minerals. Leases of mines and minerals.

A lease which gives an exclusive interest must be distinguished from a mere license; thus, a grant that it shall be lawful for a man, his heirs and assigns, at all times to enter upon the lands to search and dig for coal, is only a license, and conveys no interest so as to enable the grantee to exclude the grantor from getting coal. (*Chetham* v. *Williamson*, 4 East, 469; S. C. 1 Smith, 278). And where the owner of the fee, by indenture, granted to A. and his partners liberty to dig for metals throughout certain lands, with specified powers of working, excepting to the grantor certain liberties for driving adits, and conveying watercourses in and over the premises thereby granted, to hold the several liberties, licenses, &c., for the term of twenty-one years; and in the indenture were contained covenants by the lessee for payment of a royalty, and other covenants, and a proviso for re-entry on non-performance of the covenants, it was held that this deed was a mere license, and that the grantee could not maintain ejectment for the mines not connected with his own workings. (*Doe* d. *Hanley* v. *Wood*, 2 B. & Ald. 724; see, too, *Roberts* v. *Davey*, 4 B. & Ad. 665; S. C. 1 Nev. & Man. 443; *Muskett* v. *Hill*, 5 Bing. N. C. 694; see, too, ante, Vol. 3, p. 394). But such a license is assignable; (*Muskett* v. *Hill*, ubi supra); and the assignee may sustain an action on the case for disturbance. (Id.) But whether a covenant relating to such an interest would run with the land, is doubtful. (Id. p. 708). Lease distinguished from a license.

A lessee of lands in which there are mines unopened cannot open them, for that would be waste; but if the mines be open at the date of the lease, the lessee may work and take the profits of them. (*Saunder's case*, 5 Rep. 12; Co. Litt. 54. b.) Rights of a lessee of lands as to the mines therein;

And if the owner of lands, under which are mines, none of them opened, lease the lands and all mines therein, the lessee may work the —and of a lessee of lands and mines;

SLATE QUARRIES.

mines. (Id.) But if some of the mines are open at the date of the lease, the lessee can only work those which are open, and is debarred from opening new mines. (Co. Litt. 54. b.; *Astry* v. *Ballard*, 2 Lev. 185; S. C. 2 Jon. 71; 3 Keb. 709, 723, 761, 765, &c.; 2 Mod. 193; see, too, 2 Ventr. 342). The lessee cannot, however, take timber for working mines which he is entitled to work. (Co. Litt. 53. b. n. (1)). And, of course, if a lessee open a mine which he is not entitled to open, his assignee cannot work it; nor can a lessee except out of an assignment the profits of a mine which he has no right to work. (*Saunder's case*, 5 Rep. 12). It is apprehended that a lessee for years may make such new shafts and other works, as may be convenient, for working any mines which he has a right to work. See ante, Vol. 3, p. 396, as to the rights of a tenant for life in respect to mines.

—and of a lessee without impeachment of waste;

A lessee, without impeachment of waste, may open and work mines at his own discretion; (Co. Litt. 220. a. n. (1)*;) but it seems that he has no right to carry away the soil, as by taking it for brick making; and a court of equity will restrain him from so doing by injunction. (*Bishop of London* v. *Webb*, 1 P. Wms. 527; see, too, *Harris* v. *Ryding*, 5 Mee. & Wels. 60; *Dearden* v. *Evans*, 5 Mee. & Wels. 11).

—and of a lessee under a power.

A court of equity will, in the case of mines, assist the reversioner by decreeing an account against the tenant, even if an injunction cannot be had. (3 Atk. 264; ante, Vol. 3, p. 397). Under a power contained in a settlement to lease for twenty-one years "lands, tenements, and hereditaments" open mines may be leased, but not those which are unopened; (*Campbell* v. *Leach*, Amb. 740); but on a lease under the power, of mines generally, the lease will be good as to the open mines, if the rent reserved be a proportionate part of the minerals raised. (Id.)

As to the reservation of a proportion of the minerals by way of rent;

It is not unusual to reserve a proportion of the minerals by way of rent; and it appears by the case of *Campbell* v. *Leach*, ubi supra, that such a reservation is valid in a lease under a power. Care should be taken to make the rent payable in respect of all the minerals actually sold or disposed of, however or wherever such sale or disposition may take place. For where the lessee of a colliery covenanted to pay a proportion of all such sums of money as the coal should sell for at the pit's mouth; it was held that he was not liable under that covenant to pay any part of the monies produced by the sale of coals elsewhere than at the pit's mouth; and that evidence of payments having been made in respect of coals so sold was not admissible for the construction of the covenant. (*Clifton* v. *Walmesley*, 5 T. R. 564). It was suggested by Lord Kenyon, in giving judgment, that the conduct of the lessees might possibly be a fraud, and that perhaps a court of equity would give the lessor some relief. But this is very doubtful. In the lease of a colliery, there was a covenant by the tenant to pay as rent "one third part of the money that should arise, be made, received, or produced from the sale of the coals;" and also to keep "true

SLATE QUARRIES.

accounts of all coal daily raised, and to make and deliver true copies thereof" to the lessor; and it was held, that, taking the two covenants together, the rent was to be calculated on the amount of coal sold, and not on the amount of money actually received. (*Edwards* v. *Rees*, 7 Car. & Pay. 340).

In a case in which the rent in a colliery lease was to commence on the first quarter day after a certain quantity of coal had been dug, the Court of Chancery decreed that it should be paid from the quarter day prior to which that quantity would have been dug, but for fraudulent delay by the lessee. (*Green* v. *Sparrow*, 2 Swanst. 408).

—as to reasonable working of mines.

Searching for mines is an uncertain adventure; and therefore it is usual in leases of unopened mines, if the rent is to depend on the minerals raised, to bind the lessees to make due search for the mines. For, otherwise, the lessor might be excluded from all benefit from his mines through the default of the lessee. It is, of course, a matter of fact to be determined by a jury, whether the operations of the lessees have been sufficient according to the terms of their obligation. (*Hanson* v. *Boothman*, 13 East, 22). Where a tenant agreed to work a coal mine, so long as it was "fairly workable," and there were coals in the mine, but of such a description that it would not pay to work them; it was held that the tenant was not bound to work the mine. (*Jones* v. *Shears*, 7 Car. & Pay. 346). And where a down was let by an instrument not under seal, for the purpose of digging for copper ore, an action for use and occupation may be maintained if the lessee take possession; and if he has once taken possession, he is liable to all subsequent rent until the determination of the tenancy, whether he has continued to work the minerals or not. (*Jones* v. *Reynolds*, 7 Car. & Pay. 335). But merely digging holes, with a view to ascertain the nature of the land, is not taking possession. (Ib.; see, too, *Harris* v. *Ryding*, 5 Mee. & Wels. 60).

Reservation of power to the lessor to determine lease, if the mines are not duly worked.

But if there be a power of re-entry after a notice to be given to the persons who undertake to work the mines, the form of that notice must be strictly observed. Thus, where a license to mine was granted, with a covenant by the licensee to mine, and search for all mines and minerals within the limits, and effectually to work according to the laws of good mining, and a proviso, that if the grantee, after notice so to work, failed to keep six miners at work, and if notice in writing should be fixed within the limits, of the grantor's intention to avoid the license because of such failure, then, after the expiration of one month from the affixing of such notice, it should be lawful for the grantor to re-enter, &c.; and the grantor gave a notice to the grantee, that *unless* he kept six miners at work the grantor would re-enter at the expiration of a month, it was held that such notice did not avoid the license, or render the grantor's re-entry lawful. (*Muskett* v. *Hill*, 5 Bing. N. C. 694). Where there was a proviso determining the lease if the tenant should, at any time, cease working two years; and he

SLATE QUARRIES.

did cease for two years, and the lessor afterwards received rent, it was held that the lease was only voidable at the option of the lessor, and that he might avoid the lease upon any cesser to work, commencing two years before the day of the demise in the ejectment. (*Doe* d. *Bryan* v. *Bancks*, 4 B. & Ald. 401).

Mining lease, partnership property.

A mining lease taken by several persons for the purpose of working the mines in partnership, is partnership property. (*Fereday* v. *Wightwick*, 1 Russ. & My. 45 ; see ante, Vol, 3, p. 508, n. (*e*).

X.

COLLIERIES BY A DEAN AND CHAPTER.

LEASE *by a* DEAN AND CHAPTER *of* COLLIERIES *and* WAY-LEAVE, *at Rents certain, and Tonnage Rents varying for different Parts of the Term.* SPECIAL POWERS *of* DISTRESS *and* RE-ENTRY. PROVISO *for making up a* DEFICIENCY *in the Quantity of Coals for which a* RENT CERTAIN *is payable.* COALS *used in* COLLIERIES *to be* RENT-FREE. COVENANTS *by the* LESSEE *not to* ASSIGN *without* LICENSE—*for* WORKING *the Colliery properly—for keeping* ACCOUNTS *of the Quantities of Coals—for allowing the* LESSORS *to* INSPECT *and* MEASURE—*and several other Covenants adapted to Leases of Collieries.* COVENANTS *by the* LESSORS *for* QUIET ENJOYMENT—*that* LESSEES *may remove Coals and Machinery after* EXPIRATION *of Term*—LESSORS *to have the* OPTION *of purchasing* MACHINERY. POWER *to the* LESSEE *to* DETERMINE *the Term at the End of any* THIRD *Year.* ARBITRATION *Clauses.*

Parties.

THIS INDENTURE, made &c., BETWEEN The Right Reverend Father in God, A., Lord Bishop of ——, Dean, and the Chapter of ——, of the Cathedral Church of —— ——, [*lessors*], of the one part; and C. D., of &c., [*lessee*], of the other part: WITNESSETH, that, in consideration

Witnesseth. Consideration.

COLLIERIES BY A DEAN AND CHAPTER.

of the yearly and other rents and sums of money hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed and performed, they the said Dean and Chapter have demised, leased, and to farm letten, and by these presents, for them and their successors, do demise, lease, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL AND EVERY the coal mines, collieries, and seams of coal, as well opened as not opened, lying and being within and under, and which can, shall, or may be sought for, won, wrought, obtained, or gotten, within, forth, or out of all and every or any of the lands, (whether common, waste, inclosed, or otherwise), of and belonging to them the said Dean and Chapter, situate, lying, and being in or within the township of ——, in the county of ——, TOGETHER WITH full and free liberty, power and authority, to and for the said C. D., his executors, administrators, and assigns, to dig, sink, rid, win, work, and make pits, shafts, trenches, and grooves, and to drive drifts, and to make air-courses, water-gates, and water-courses, as well for the winning, working, and obtaining of coals, forth and out of the said coal mines or collieries, and all and every or any of the seams of coal therein, or thereto belonging, as for the avoiding and carrying away of water, or foul air or styth, from, forth, or out of the said collieries, or for the conveying of air into the same: AND ALSO to take and use sufficient and convenient heap-room, ground-room, and pit-room, for laying and placing all such coals, stones, gravel, and earth, as shall from time to time be gotten or wrought forth and out of the same collieries, TOGETHER WITH full and sufficient way-leave and passage to and for the said C. D., his executors, administrators, and assigns, and his and their agents, servants, and workmen, from time to time and at all times during the term hereby granted, to take, lead, and carry away with carts, waggons, or any other carriages, the coals and cinders to be won, wrought, gotten, and burnt in, forth, out of, and at the said collieries, in, through, over, and along all and every or any of the said

Demise.

Parcels.

With powers to make pits, drifts, &c.;

—and take heap-room and pit-room;

—and with sufficient way-leave;

COLLIERIES BY A DEAN AND CHAPTER.

lands of and belonging to the said Dean and Chapter, within the township of —— aforesaid, or any of them, or any part thereof, (the same not being a garden, plantation, or pleasure ground), to or towards such staith or staiths, or other place or places as he the said C. D., his executors, administrators, or assigns, shall think expedient (*a*): AND WITH full and free liberty, power and authority, in and upon the same lands, or any of them, or any part thereof, (not being a garden, plantation, or pleasure ground), to erect and make, lay and place one or more waggon-way or waggon-ways, byeways, sideways, roads, branches, bridges, mounds, batteries, or cuts, or other coal-way or coal-ways, or ways for waggons, and other carriages, loaden or not loaden, to pass and repass over and along the same, and from time to time to amend and repair the said waggon-ways, and other works and erections, or any of them, when and as often as occasion shall require: TOGETHER ALSO WITH full and free liberty and authority upon the same lands to erect and build engines, engine-houses, machines, store-houses, cottages, sheds, and all other necessary erections and buildings for drawing or raising of coals or water, and for the standing of horses, and laying and placing of coals, cinders, and materials to be used and employed in or about the said collieries, and for the residence of the workmen and others to be employed in or about the same collieries, and for all other necessary or usual colliery purposes, so always as that as little damage be done as reasonably may be to the same lands: AND ALSO WITH full and free liberty and license to dig and get clay, and to make bricks and tiles in and upon the same lands, or any of them, (not being a garden, plantation, or pleasure ground), for the use of the said collieries, or the works connected therewith, but not for sale, and also to dig and get, in the most convenient place or places in the same lands, (not being a garden, plantation, or pleasure ground), earth, stones, and rubbish for the use of the said collieries, or the works connected therewith, but not for

—and power to lay waggon-ways;

—room to erect engines and buildings;

—and power to dig clay, &c.;

(*a*) See infra, Precedent XII, n. (*a*).

COLLIERIES BY A DEAN AND CHAPTER.

sale: AND ALSO WITH full and free liberty, power, and authority, to do any act or thing whatsoever which shall or may be necessary or convenient to be done for, in, or about the winning, working, obtaining, or getting of coals, in, forth, and out of the said collieries, or the leading, carrying, or conveying of coals or cinders from the same, or for leading or conveying of timber, stones, bricks, lime, iron, or other materials to or from the same: SO ALWAYS, NEVERTHELESS, that none of the said waggon-way, or waggon-ways, or roads, with the byeways and sideways thereof, (the gutters included), shall or do exceed fifteen yards in breadth in any part thereof, except in such places where mounds, batteries, cuts, or bridges are necessary: EXCEPT AND ALWAYS RESERVED (*b*) out of these presents, and the demise intended to be hereby made, unto and for the said Dean and Chapter, and their successors and assigns, full and free right, power, and liberty to have and use, and to demise and grant to any other person or persons whomsoever, any way-leave or passage to or from or for the use of any other collieries whatsoever, in, through, over, and along all and every or any of the lands aforesaid, with liberty to make, lay, and place, and use any other waggon-ways, sideways, and other ways, and also with liberty to place the same across, and therewith to intersect any waggon-ways or other ways made or laid by the said C. D., his executors, administrators, or assigns, and to pass and repass in, through, upon, over, and along such waggon-ways or other ways, in, through, upon, over, and along such crossings, with horses, cattle, waggons, and other carriages whatsoever, loaden and unloaden, but so as the same do not prejudice or damage the waggon-ways or other ways which shall be made or laid by the said C. D., his executors, administrators, or assigns, otherwise than by crossing or intersecting the same, and so as in such crossings thereof as little hinderance or interruption as reasonably may be, shall be given to the said C. D., his executors, administrators, or assigns, and his and their

—and with power to do all other necessary acts;

—but with a limitation as to the width of the ways.

Excepting to the lessors, the power of making and granting ways to cross the demised ways;

(*b*) As to the nature of and difference between exceptions and reservations, see supra, p. 44, n. (*a*).

COLLIERIES BY A DEAN AND CHAPTER.

agents, servants, or workmen, and so as the place or places of such crossing or intersecting be made and repaired and kept in good repair by and at the expense of the person or persons using the same respectively: AND ALSO EXCEPT AND RESERVED out of these presents, and the demise intended to be hereby made unto and for the said Dean and Chapter, and their successors, tenants, and assigns, and the servants and workmen of the said Dean and Chapter, their successors, tenants, and assigns, full and free liberty, license, power, and authority, at all convenient times during the continuance of the term hereby granted, for the use, benefit, and improvement of their farms, lands, and grounds in the said township of —— aforesaid, with horses, cattle, and other animals, waggons and other carriages, loaden or unloaden, (being employed for the use of the same respective farms, lands, and grounds, to pass and repass across the waggon-way or ways hereby demised, at their will and pleasure, and also to pass and repass along the same way or ways with carriages having wheels of the same construction as the carriages then used on the same way or ways, on paying a fair compensation for the same, so as in doing thereof they do not obstruct or hinder the waggons passing along the same, and do as little damage as may be to the aforesaid waggon-way or ways in crossing the same: AND ALSO, EXCEPT AND RESERVED out of these presents, and the demise intended to be hereby made unto and for the said Dean and Chapter, and their successors and assigns, full and free liberty, power, and authority to use, and pass and repass, and to grant or demise to any other person or persons liberty, power, and authority to use, and pass and repass, by, over, and along all and every or any of the said waggon-ways, and other ways now made, laid, or used, or by virtue of these presents to be made, laid, or used by the said C. D., his executors, administrators, or assigns, with horses, waggons, and other carriages, loaden and unloaden, for the leading, carrying, or conveying of coals, cinders, wood, stone, iron, and other materials, to and from or for the use of any other collieries, such waggons and carriages having wheels of the same construction as the waggons or carriages then used on the

—and to cross and use for farming purposes the ways to be laid by the lessee;

—and to use and grant permission to use such ways for other collieries;

COLLIERIES BY A DEAN AND CHAPTER.

same way or ways: AND FOR THE exercise and enjoyment of all or any of such reserved leadings, carriage or conveyance, and for such other excepted purposes as aforesaid, to have the use of and to employ all or any of the engines, machines, inclined planes, machinery, ropes, and rollers, now erected, made, or placed by the said C. D., his executors, administrators, or assigns, in or upon the said waggon ways or other ways hereby demised, or any part thereof, or to be connected with or attached or applied to the same way and other ways, or any part thereof, but so as the said Dean and Chapter, and their successors, tenants, or assigns, or other persons aforesaid, shall make a fair compensation to the said C. D., his executors, administrators, or assigns, for the exercise of the liberty and privilege lastly hereinbefore excepted and reserved: AND ALSO, EXCEPT AND RESERVED unto the said Dean and Chapter, and their successors and assigns, full power and authority to stop and hinder every other person from going or passing along or using the said waggon way or ways or other ways hereby demised, or any of them, without their license, and to take and impound all carts, waggons, and other carriages which they shall find going along or using the same way or ways, and the coals or other materials (if any) therein, other than and excepting such persons' carts, waggons, and other carriages as are hereby empowered to use and pass along the same: TO HAVE AND TO HOLD the said coal mines, collieries, seams of coal, way-leave, liberties, powers, and privileges, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, from the —— day of ——, for the term of twenty-one years thenceforth next ensuing, and fully to be complete and ended: YIELDING AND PAYING therefore, yearly and every year during the first fourteen years of the said term, unto the said Dean and Chapter, and their successors or assigns, within the precincts of the said Cathedral Church of ——, at their new exchequer, over or near the east gate there, the yearly rent or sum of £100 for the yearly number or quantity of one hundred and fifty tons of coals: AND ALSO YIELDING AND PAYING, yearly

—with the privilege of using the lessee's engines and machinery.

Excepting the power to stop strangers from using the demised ways.

Habendum.

Reddendum of a gross rent for a certain number of tons for part of the term;

—and similarly

COLLIERIES BY A DEAN AND CHAPTER.

and every year during the last seven years of the said term, unto the said Dean and Chapter, and their successors or assigns, at the place aforesaid, the certain clear yearly rent or sum of £200, for the yearly number or quantity of one hundred and sixty tons of coals (*c*): THE SAID yearly rents or sums to be payabe, whether such respective yearly numbers or quantities of one hundred and fifty tons and one hundred and sixty tons shall or shall not be yearly won, wrought, and gotten, in, forth, and out of, and be led and carried away from the said collieries, and to be paid in equal portions, on the 25th day of March and the 28th day of September in every year: AND ALSO YIELDING AND PAYING unto the said Dean and Chapter, and their successors or assigns, at the place aforesaid, over and above the said certain yearly rent or sum of £100, during the first fourteen years of the said term of twenty-one years, the further rent or sum of 21*s.* for every ton of coals (except as hereinafter mentioned) which shall yearly during such fourteen years be won and wrought from and out of the said collieries, over and exceeding the said yearly number of one hundred and fifty tons, and so in proportion for a less quantity than a ton: AND ALSO YIELDING AND PAYING unto the said Dean and Chapter, and their successors or assigns, at the place aforesaid, over and above the said certain yearly rent or sum of £200, during the said last seven years of the said term of twenty-one years, the further rent or sum of 25*s.* for every ton of coals (except as hereinafter mentioned) which shall yearly, during such seven years, be won and wrought from and out of the said collieries, over and exceeding the said yearly number of one hundred and sixty tons, and so in proportion for a less

for the residue of the term;

—the rents to be paid whether these numbers of tons be gotten or not; and by half-yearly payments.

Reddendum of a tonnage rent for each ton exceeding the fixed number during the first part of the term;

—and similarly during the last part of the term.

Abolition of local and customary weights and measures.

(*c*) In the original lease there followed in this place, "reckoning and accounting each ton to consist of four hundred and thirty-two bolls, and each boll to contain thirty-six gallons, Winchester measure;" but now by the statute 4 & 5 Will. 4, c. 63, sect. 6, the Winchester bushel and all other local and customary measures have been abolished, and by sect. 9 of the same statute, coals are only to be sold by weight. By sect. 11, the ton must consist of twenty hundredweight imperial measure.

quantity than a ton: THE SAID respective tonnage rents to be paid yearly, on the 28th day of September in each year, and in such manner as that at each yearly payment the whole of what such tonnage rents as aforesaid shall have amounted to during the year next preceding such day of payment shall be then paid: THE SAID certain yearly rents and the said tonnage rents to be paid free and clear of and from all existing and future taxes, charges, rates, assessments, impositions, payments, and outgoings whatsoever: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said several rents or sums of money hereby reserved and made payable, or any of them, or any part thereof respectively, shall be behind or unpaid by the space of forty days next after any of the said several days whereon the same ought to be respectively paid as aforesaid, then and in every such case it shall be lawful for the said Dean and Chapter, or their successors or assigns, not only to stop and hinder, either at the pit or pits of the said collieries, or in or upon any part of the aforesaid lands or grounds within the said township of ——, all and every of the horses and other animals, carts, wains, waggons, and carriages whatsoever, and the persons leading and conducting the same from leading, carrying, and conveying all or any of the coals and cinders wrought or burnt, or to be wrought or burnt, from the same collieries, or any of them, or which shall have been brought to bank within or led over any of the same lands and grounds, but also to seize, distrain, sell, and dispose of all and every the coals and cinders wrought or burnt, and to be wrought or burnt, out of or at the same collieries, and then lying and being above ground upon the same lands or grounds, and all and singular the horses and other animals, carts, wains, waggons, engines, gins, implements, rollers, ropes, and other utensils and materials whatsoever, belonging to and used or provided for carrying on the said collieries, for payment and satisfaction of all such rents as shall be then due to the said Dean and Chapter, or their successors or assigns, together with the full costs and charges to be occasioned by every such distress and sale, rendering upon demand

COLLIERIES BY A DEAN AND CHAPTER.

The tonnage rents to be paid yearly.

All the rents to be paid clear of deduction.

Power to distrain the coals, carriages, &c.

COLLIERIES BY A DEAN AND CHAPTER.

the overplus, if any, to the owner or owners of the cattle, goods, and chattels so to be distrained upon: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that if the said yearly and other rents or sums of money, or any of them, or any part or parts thereof respectively, shall be behind or unpaid by the space of sixty days next after any of the said days or times whereon the same ought to be respectively paid as aforesaid, or if the said C. D., his executors, administrators, or assigns, shall, at any time during the said term hereby granted, assign or transfer to any person or persons whomsoever the said collieries and seams of coal, or any of them, or any part thereof respectively, or any of the liberties, powers, and authorities, or other the premises hereinbefore demised, or expressed and intended so to be, without the license of the said Dean and Chapter or their successors, under their common or chapter seal, or if the said C. D., his executors, administrators, or assigns, shall grant to any person or persons whomsoever any drift, water-gate or water-course, or permit or suffer any person or persons to make, have, or use any drift, water-gate or water-course, or other communication whatsoever, either from or into any part of the said collieries, or any of them, without such license as aforesaid, then and in every such case and thenceforth it shall be lawful for the said Dean and Chapter, and their successors and assigns, into and upon the said collieries and premises, or any of them, or any part thereof, in the name of the whole to re-enter, and the same thenceforth to have again, repossess, and enjoy as in their former estate, anything herein contained to the contrary thereof in anywise notwithstanding: PROVIDED ALSO, and it is hereby further agreed and declared by and between the said parties to these presents, that if the said C. D., his executors, administrators, or assigns, shall not and do not, in any one or more of the first fourteen years of the said term hereby granted, win, work, and obtain, from, forth, and out of the said collieries, the full quantity of one hundred and fifty tons of coals, then and in such case, and so often as such deficiency shall happen, it shall be lawful for the said C. D., his executors,

Power of re-entry.

Proviso, that if the quantity of coal in any year fall short of the quantity for which a rent certain is payable, the deficiency may be made up in the succeeding year, rent-free.

COLLIERIES BY A DEAN AND CHAPTER.

administrators, and assigns, in the then next succeeding year after the year in which such deficiency shall happen, but not afterwards, in order to make up and supply every such deficiency, in the first place to win, work, lead, and carry away, sell and dispose, from, forth, and out of the said collieries, such quantity of coals as shall be equal to the quantity by which the coals won, worked, and obtained in the year next preceding shall have fallen short of the quantity of one hundred and fifty tons, without paying any further or other rents or sums of money for or in respect of the coals so to be wrought and gotten from time to time, for the making up and supplying of such deficiency: [*Similar proviso as to a deficiency in any year of the last seven years of the term*]: PROVIDED ALSO, and it is hereby agreed and declared between and by the said parties to these presents, that it shall be lawful for the said C. D., his executors, administrators, and assigns, at all times during the said term hereby granted, to take and use such quantities of coals to be wrought and gotten from and out of the said collieries, without paying any rent for the same, as shall be requisite for the fire or steam engines used, at or about the same collieries, and otherwise at the pit or pits, and by the agents and workmen to be employed in working and carrying on the same: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said Dean and Chapter, their successors and assigns, in manner following: that is to say, that he the said C. D., his executors, administrators, or assigns, or some of them, shall and will pay or cause to be paid unto the said Dean and Chapter, and their successors or assigns, the said yearly rents of £100 and £200, and the said tonnage rents and sums of money hereinbefore reserved and made payable, on and at the days and place and in the manner hereinbefore mentioned for the payment thereof respectively, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents: AND SHALL and will in every year during the said term, upon the several days on which the said certain yearly rents are appointed to be paid as aforesaid, pay or cause to be paid unto the

Coals for engines and workmen to be used rent-free.

Covenants by the lessee for payment of rent;

—and of compensation for damage;

COLLIERIES BY A DEAN AND CHAPTER.

said Dean and Chapter, or their successors or assigns, compensation for the damage and spoil of their lands and grounds situate within the said township of ——, or any part thereof, which shall be done or occasioned by or in the working of the said collieries, or in the exercise of the powers, liberties, and authorities hereinbefore granted, or any of them: AND SHALL and will, from time to time and at all times during the said term hereby granted, pay and discharge all existing and future taxes, charges, rates, assessments, payments, impositions, and outgoings whatsoever, in respect of the said premises or any of them: AND ALSO, that he the said C. D., his executors, administrators, or assigns, shall not nor will, during the said term hereby granted, assign or transfer to any person or persons whomsoever the said collieries, seams of coal, liberties, powers, authorities, and premises hereby demised, or any of them, or any part thereof, without such license of the said Dean and Chapter or their successors as aforesaid: AND SHALL not and will not, at any time during the said term, grant to any person or persons any drifts, out-stroke, water-gates or water-courses, or make or use, license or suffer any person or persons to make or use, any drift, out-stroke, water-gate or water-courses, or other communication whatsoever, either from or into any part of the said collieries, without such license as last aforesaid: AND SHALL not and will not, at any time during the said term, lead or carry, or suffer to be led or carried, along any of the waggon-ways and railways, to be made and placed, by virtue of these presents, in or upon any of the said lands and grounds, any coals, cinders, lead, iron, stones, wood, or other things, from or to any other colliery, other than and except the collieries hereby demised, without such license as last aforesaid: AND ALSO, that he the said C. D., his executors, administrators, or assigns, shall and will keep separate and distinct accounts of the workings and leadings of and from each and every of the seams of the said collieries, and of the coals which shall be drawn to bank by the said C. D., his executors, administrators, or assigns, in the said lands and grounds, within the said township of ——, and also shall and will in such accounts particularly

—and of taxes, &c.;

—and not to assign without license;

—or grant or suffer any communication to be made;

—or permit the ways to be used for other collieries;

—and to keep accounts of the coals worked;

distinguish the several numbers and quantities of tons of coal which shall be so wrought in the said collieries: AND ALSO, that it shall be lawful for the said Dean and Chapter, and their successors and assigns, or their agents, viewers, or servants, from time to time and at all times during the said term hereby granted, without any interruption, to ride and descend into all and every or any of the said pits and shafts out of which coals shall be wrought by virtue of these presents, and drawn and brought to bank, and to use the servants and horses, engines, ropes, rollers, and other materials thereof, belonging to the said C. D., his executors, administrators, and assigns, for that purpose, and for their safe return forth and out of the said pit or pits, shaft or shafts, to view, inspect, and survey the said collieries, and the workings thereof, so as such persons to be employed by or on the part of the said Dean and Chapter, and their successors or assigns, shall be no more than five in any one view in any one day, and so as such persons or viewers do not thereby obstruct the workings of the said collieries, or the drawing the coals wrought thereout respectively to bank more than necessity shall require, and shall and will permit, allow, and cause two or more of the under overmen, or other servants or workmen, who have a full and perfect knowledge of the said collieries, to attend and assist the agents, viewers, or servants of the said Dean and Chapter, or their successors or assigns, to view and survey the said workings, if thereunto required by the said agents, viewers, or servants: AND SHALL and will, from time to time during the said term hereby granted, make and keep, or cause to be made and kept, a proper and accurate plan or proper and accurate plans of the workings of the said collieries: AND SHALL and will permit and suffer the said Dean and Chapter, and their successors and assigns, and their agents, viewers, and servants, from time to time and at all reasonable times during the said term, to have access to, and to make copies of or to take extracts from, the same plan or plans at the office at or belonging to the said collieries: AND FURTHER, THAT the said C. D., his executors, administrators, and assigns, shall and will, at all

COLLIERIES BY A DEAN AND CHAPTER.

—and that the lessors may enter and inspect the collieries;

—and that lessees will keep plans of workings;

—and permit the lessors to view them;

—and that lessee will keep waggons and

COLLIERIES BY A DEAN AND CHAPTER.

corves of a uniform size;

times during the said term hereby granted, make and keep all the waggons and other carriages to be used on the aforesaid waggon-ways, and all the corves used for drawing coals at the pits of the said collieries, of one measure and uniform size, and shall not nor will at any time alter, or cause or permit to be altered, the size of such waggons and corves, without having first given three calendar months' notice in writing to the said Dean and Chapter, or their successors or assigns, of the intention to make such alteration: AND ALSO shall and will permit the said Dean and Chapter, and their successors and assigns, and their agents, viewers, or servants, from time to time and at all times during the said term hereby granted, to measure and gauge the said corves, waggons, and carriages, as often as he or they shall think proper, and if upon measuring the said corves, waggons, or other carriages, the same or any of them shall be found to carry over measure, then and in such case the said Dean and Chapter, or their successors or assigns, or their agents, viewers, or servants, shall and may stop and hinder the said corves or waggons and carriages so carrying over measure from drawing and carrying coals at or from the said collieries, and all and every the corves, waggons, and carriages so found to carry over measure shall be accounted to have carried such over measure for the space of three calendar months then next preceding, unless there shall have happened an admeasurement of the corves, waggons, or carriages as aforesaid within such three calendar months, and then and in such case from the time of such admeasurement: AND ALSO, that the said C. D., his executors, administrators, or assigns, shall and will, at the end of every month during the said term hereby granted, and within ten days after a request in that behalf shall have been made at the pit or pits, or at the office of the said collieries, by the said Dean and Chapter, or their successors or assigns, or their agent or agents, give or cause to be given unto the said Dean and Chapter, or their successors or assigns, or their agents, a true and perfect account in writing, (distinguishing as hereinbefore is mentioned), under the hand or hands of the overman or overmen,

—and that lessors may gauge the corves and waggons;

—and stop those carrying over measure;

—and that lessees will render monthly accounts (if required) of the working of the collieries;

COLLIERIES BY A DEAN AND CHAPTER.

viewer or viewers, or under overman or overmen, staithman or staithmen, employed in or about the working or management of the said collieries by the said C. D., his executors, administrators, or assigns, of the number of waggons and tons, or other quantities of coal, which from time to time shall have been wrought or gotten forth and out of the said collieries, and brought to bank at any shaft or shafts thereof, and which shall be led or sold from the said collieries during the month next before such request shall have been made, or from the time the last such account shall have been given as aforesaid: AND THAT the said C. D., his executors, administrators, or assigns, and his and their viewers and agents, shall and will at and after the end of every month of the said term, upon the request of the said Dean and Chapter, their successors or assigns, or their agent or agents, shew forth and produce, or cause to be shewn forth and produced, to the said Dean and Chapter, or their successors or assigns, or to their agent or agents, the several bills of presentments which shall have been kept or made and delivered to the said C. D., his executors, administrators, or assigns, or his or their agents, stewards, or viewers, by the overman and overmen, under overman and overmen, staithman or staithmen, or other servants or workmen of the said C. D., his executors, administrators, or assigns, of all such quantities of coals as shall within that time, or from the time of such last account, have been gotten and drawn to bank, together with the several particulars made, given, or taken to or by the overman or overmen or viewers respectively, concerning such the quantities of coals, during such time as last aforesaid, drawn to bank, and led, sold, or carried away from or out of the said collieries: AND ALSO, THAT the said C. D., his executors, administrators, and assigns, shall and will, at all times during the continuance of the term hereby granted, work, manage, and carry on the said seams of coal, coal mines, or collieries, according to the best and most improved method of working (*d*), and in such manner

—and, upon request, shew the bills of presentments and other particulars;

—and that lessee will work collieries in the most approved manner;

(*d*) Sometimes the covenant is, to work according to the best and

COLLIERIES BY A DEAN AND CHAPTER.

as shall from time to time be satisfactory to and approved of by the colliery viewer or agent for the time being of the said Dean and Chapter, or their successors or assigns:

—and leave barriers of coal;

AND SHALL and will at all times keep and leave a barrier or bulk of solid coal, not less than four yards in width, between each of the several seams hereinbefore demised and each of the seams of any adjoining collieries:

—and do no act whereby the collieries may be injured;

AND SHALL NOT and will not, at any time during the said term hereby granted, wilfully or negligently do or suffer any act or thing which may occasion, or tend to occasion, or endanger the drowning of the said collieries, or any loss of coal that could be wrought to profit, or which may occasion, or tend to occasion, or bring any thrust upon the same, or that may tend to hinder, stop, or obstruct any of the water-courses, passages, or drifts which shall be in or belonging to the said collieries:

—and not sink shafts near the turnpike-road or dwelling-houses;

AND ALSO, THAT the said C. D., his executors, administrators, and assigns, or his or their workmen, shall not and will not, by any means whatsoever, do or occasion any injury or damage to, or sink any pit or shaft within the distance of one hundred and fifty yards of the turnpike road leading through the —— township of —— aforesaid, from the city of —— to ——, in the said county of ——, or within the like distance of any dwelling-house, building, fold, or farm-yard, now erected, or being or hereafter to be erected, upon any of the said lands and grounds at or within the township of —— aforesaid (*e*):

—and that lessee, if required, shall leave old shafts open with the furniture;

AND THAT the said C. D., his executors, administrators, and assigns, shall and will, from time to time during the said term, as and when he or they shall leave off working or drawing coals to bank at any pit or shaft, (if thereunto required by the said Dean and Chapter, or their successors or assigns, or their agent or colliery viewer), leave such pit or shaft open, together with the deals and timber thereunto affixed or belonging, for the use and benefit of the said Dean

---

most improved method in a particular district, as "on the river ——," or "in the county of ——."

(*e*) See on the construction of clauses of this kind, ante, Vol. 3, p. 405, n. (*f*).

COLLIERIES BY A DEAN AND CHAPTER.

and Chapter, or their successors or assigns: AND ALSO, THAT the said C. D., his executors, administrators, or assigns, shall and will, at the expiration or other sooner determination of the said term hereby granted, yield and deliver up to the said Dean and Chapter, their successors or assigns, the quiet and peaceable possession of all and singular the said collieries and other the premises hereinbefore demised, together with the several working pits, air-courses, and water-courses, well and sufficiently walled, timbered, and free, open, and upstanding, and in working condition, unless prevented by unavoidable creeps, thrusts, or other accidents; and also the rollers and tram-ways of and belonging to the said collieries, and then used or employed therewith, or which, within the space of four calendar months next before the expiration or other sooner determination of the said term, shall have been used or employed therewith, the malleable and cast iron thereon excepted, and also all the workmen's houses and other buildings in tenantable repair and condition, and also such a quantity of unwrought accessible coal in the pits then being worked, as will be sufficient to serve the usual vend of the said collieries for the space of eighteen months, provided that such a quantity of accessible coal be then remaining in the said collieries: AND ALSO, THAT the said C. D., his executors, administrators, and assigns, shall and will within six calendar months after the expiration or other sooner determination of the said term (if thereunto required by the said Dean and Chapter, their successors or assigns, or their agent or colliery viewer, and so far as the same shall be practicable) fill up all such pits as shall have ceased to be worked, and shall not have been required by the said Dean and Chapter, their successors or assigns, or their agent or colliery viewer, to be kept open as aforesaid, and make level and fit for ploughing all such parts of the said lands and grounds as in the exercise of the powers, liberties, and authorities aforesaid, or any of them, shall have been rendered unfit for ploughing: AND ALSO, THAT the said C. D., his executors, administrators, and assigns, shall and will, at the end or other sooner determination of the said term hereby granted, cause all such coals as shall have been brought to bank, and shall be then unled, to be so placed,

—and shall, at the determination of the term, yield up the collieries in good condition;

—and, if required, fill up old shafts, and leave spoiled land fit for ploughing;

—and place coal, unled at end of term, so as not to impede the works;

COLLIERIES BY A DEAN AND CHAPTER.

until the same shall be led away and disposed of as hereinafter is mentioned, as that the said Dean and Chapter, and their successors or assigns, may have sufficient heap room, and may be impeded as little as possible in the carrying on of the said collieries: AND ALSO, THAT the said C. D., his executors, administrators, and assigns, shall and will, at all times during the said term hereby granted, at his and their own proper costs and charges, set up, maintain, uphold, and keep a sufficient number of gates in and upon the waggon-way or ways leading to and from the said collieries, and keep the said gates shut so as to prevent the ingress or egress of cattle: AND SHALL and will during the said term, when and as often as the said C. D., his executors, administrators, or assigns, shall cease to work at any of the said pits or shafts, erect, and at all times during the said term maintain, and at the end or other sooner determination thereof leave a sufficient rail or fence round such pits or shafts as the said Dean and Chapter, and their successors or assigns, or their agent or colliery viewer, shall require to be left open: AND ALSO shall and will, from time to time during the said term, make unto the respective tenant or tenants, occupier or occupiers, of the several beforementioned lands and grounds belonging to the said Dean and Chapter, reasonable compensation for damage or spoil of ground to be done or occasioned by or in the working of the said coal mines or collieries, or in the exercise of the powers, liberties, and authorities hereinbefore granted, or any of them: AND ALSO, THAT the said C. D., his executors, administrators, and assigns, shall and will, at his and their own charges, draw to bank at some of the pits of the said collieries, all the manure, compost, and dung, to be made and produced by the horses to be employed under ground in the said collieries: AND SHALL and will permit as well the same manure, compost, and dung, as also all the manure, compost, and dung to be made and produced on the waggon-ways and other the premises hereby demised, to be removed and made use of by the tenants or occupiers of the said lands and grounds of and belonging to the said Dean and Chapter as their own property, and without any payment for the same, provided

—and place gates on the waggon-ways;

—and fence off old shafts;

—and make compensation for damage to tenants;

—and draw under ground manure to bank;

—and permit that and other manure to be used by tenants of lessor.

COLLIERIES BY A DEAN AND CHAPTER.

that the said manure, compost, and dung, to be so drawn to bank as aforesaid, shall not be required for the due manureance of the lands and grounds which the said C. D., his executors, administrators, and assigns, shall for the time being hold under the said Dean and Chapter or their successors or assigns: AND THE SAID DEAN AND CHAPTER do hereby for themselves, their successors, and assigns, covenant with the said C. D., his executors, administrators, and assigns, in manner following: (that is to say), that it shall be lawful for the said C. D., his executors, administrators, and assigns, (he and they paying the several rents hereby reserved at the times and in manner aforesaid, and observing and performing the several covenants, conditions, and agreements herein contained, and on his and their parts to be observed and performed), at all times during the said term of twenty-one years hereby granted, peaceably and quietly to have, hold, use, occupy, possess, and enjoy, all and every the said collieries, coal mines, seams of coal, liberties, powers, privileges, and authorities, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, without the let, suit, trouble, interruption, eviction, or disturbance of, from, or by the said Dean and Chapter, their successors or assigns, or any other person or persons whomsoever lawfully or equitably claiming, or to claim, by, from, under, or in trust for them, or any of them: AND FURTHER, THAT (so far as the said Dean and Chapter have power so to grant or permit) it shall be lawful for the said C. D., his executors, administrators, and assigns, at any time or times within the space of six calendar months next after the expiration or other sooner determination of the said term hereby granted, to have, take, lead, and carry away and enjoy to his and their own use, all such coals as shall, at the expiration or other sooner determination of the said term, be ready wrought and laid above bank, at all or any of the pits or shafts of or belonging to the said collieries, he or they having first paid and discharged the several rents and sums of money hereinbefore reserved, and having observed and performed all and singular the covenants and agreements hereinbefore contained, and on his and their parts to be observed and performed:

Covenants by the lessors for quiet enjoyment;

—and that lessees, after expiration of term, may carry away coals then brought to bank;

COLLIERIES BY A DEAN AND CHAPTER.

—and repair ways;

—and remove fixtures and machinery.

AND ALSO, at any time or times within the space last aforesaid, to repair and amend the aforesaid waggon-way or ways as often as occasion shall require, and to remove and take away for his and their own use, all such houses and hovels as shall be built with deals or timber, and covered with deals, and all and every the steam-engines, and the machinery and utensils thereunto belonging, and all other engines, gins, mills, rollers, staiths, trunks, iron, timber, wood, ropes, and other materials, and all the rails and sleepers on any waggon-way or waggon-ways, or other ways which shall by the said C. D., his executors, administrators, or assigns, at any time or times during the said term hereby granted, be made, erected, built, laid, placed, fixed, or used in and upon any of the several lands or grounds aforesaid, (save and except the stone and brick work of or belonging to the steam and other engines and premises), and the brattishes or stoppings of timber, deals, bricks, or stones, air-tubes and air furnaces, fixed and placed for the purpose of conveying air for the proper and necessary ventilation of the mines, he the said C. D., his executors, administrators, and assigns, having first paid the several rents hereinbefore reserved, and having first observed and performed all the covenants, conditions, and agreements hereinbefore contained, and on his and their part to be observed and performed, and also making reasonable compensation for damage and spoil of ground to be occasioned thereby (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that, if the said Dean and Chapter, or their successors or assigns, or their next succeeding tenant or lessee, shall be desirous of purchasing the said houses, hovels, steam-engines and other engines, machinery, utensils, gins, mills, rollers, staiths, trunks, iron, timber, wood, ropes, and other materials, rails, sleepers, and premises, or any of them, and of such their desire shall leave a notice in writing for the said C. D., his executors, administrators, or assigns, at the office or place then made use of for trans-

Proviso that lessor, or succeeding tenant, shall have the option of purchasing fixtures and machinery.

(*f*) With respect to the general power to remove machinery and other fixtures, see supra, p. 85, n. (*a*).

COLLIERIES BY A DEAN AND CHAPTER.

acting the business of the said collieries, at any time before six calendar months next before the expiration or other sooner determination of the said term hereby granted, then and in such case the said premises lastly hereinbefore mentioned, or such of them as the said Dean and Chapter, and their successors or assigns, or their next succeeding tenant or lessee, shall be desirous of purchasing, shall not be removed or taken away, but shall, at or upon the expiration or other sooner determination of the said term, be paid or allowed for by the said Dean and Chapter, their successors or assigns, or their next succeeding tenant or lessee, and shall thenceforth (subject nevertheless to the aforesaid right and liberty to the said C. D., his executors, administrators, and assigns, of using the said waggon-way or ways, or other ways for leading away the coals remaining at the pits of the said collieries at the expiration or other sooner determination of the said term) belong to the said Dean and Chapter, their successors or assigns, or their next succeeding tenant or lessee, (as the case may be), as their or his own property and effects: PROVIDED ALSO, and it is hereby agreed and declared between and by the said parties to these presents, that if the said C. D., his executors, administrators, or assigns, shall be desirous of determining the said term of twenty-one years hereby granted, at the end of the third year, or of any subsequent third year thereof, and of such his or their desire shall give to the said Dean and Chapter, or their successors or assigns, or their agent or steward, not less than twelve calendar months' notice in writing previous to the end of any such third year thereof, and if the said C. D., his executors, administrators, or assigns, shall, at or before the expiration of such third year, pay and discharge the several rents hereinbefore reserved, and which shall then have become payable, and perform and fulfil the several covenants, conditions, and agreements hereinbefore contained, and on his or their parts to be performed and fulfilled, up to that time, then and in such case at the end of such third year the said term hereby granted shall cease and determine (*g*): AND THEY THE SAID Dean

Power for the lessee, by notice, to determine the term, at the end of any third year thereof.

Mutual cove-

(*g*) On the construction of clauses of this kind, see supra, p. 133, n. (*g*).

COLLIERIES BY A DEAN AND CHAPTER.

and Chapter (so far as they lawfully may, and so far as relates to the acts and deeds of themselves, their successors and assigns, and of their next succeeding tenant or lessee, or his representatives) do hereby, for themselves and their successors, covenant with the said C. D., his executors, administrators, and assigns, and he the said C. D. (so far as relates to the acts and deeds of himself, his executors, administrators, and assigns) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said Dean and Chapter, their successors and assigns, in manner following: (that is to say,) THAT if any doubt, difference, or dispute, shall at any time or times hereafter arise between the said Dean and Chapter, their successors or assigns, (including their farmers and tenants), or their next succeeding tenant or lessee, or his representatives, and the said C. D., his executors, administrators, or assigns, or between any of them, touching the matters in respect of which compensation ought to be made in pursuance of these presents, or touching the amount of such compensation, or the price to be paid in respect of any of the things which may be about to be purchased in pursuance of these presents, or touching the manner in which the said collieries, powers, liberties, and authorities, or any of them, ought to be worked, managed, exercised, or used, or touching the construction of these presents, or any other matter or thing whatsoever arising out of these presents, or having relation to the premises, then and in such case, and so often as the same shall happen, such doubt, difference, or dispute shall be reduced into writing, and be submitted and referred to the arbitration of three indifferent persons, one to be from time to time chosen by each of the parties so doubting, differing, or disputing, within one calendar month after either of them shall have made to the other a requisition to that effect, and the third to be named by the two persons from time to time first chosen, within one calendar month after they shall have been themselves chosen: AND FURTHER, THAT if either of the parties so doubting, differing, or disputing as aforesaid, shall, by any writing under his or their hand or hands, require the other of the said parties to submit and refer the same to arbitra-

—covenants for submitting matters in dispute to arbitration.

—and provision for default in the making of such submission and for default of arbitrator to act.

COLLIERIES BY A DEAN AND CHAPTER.

tion, and in pursuance of the covenant lastly hereinbefore contained to name some person as arbitrator, and if the party to whom such requisition shall be made, shall, for the space of one calendar month after such requisition, neglect or refuse to comply therewith, or shall name a person who shall neglect or refuse to act as such arbitrator as aforesaid, then and so often as the same shall happen, it shall be lawful for the person chosen to be arbitrator on behalf of the party making such requisition, by any writing under his hand, to appoint some person to act as arbitrator on behalf of the party who, or the arbitrator named by whom, shall refuse or neglect as aforesaid, and that such two persons shall name a third arbitrator as aforesaid: AND FURTHER, THAT it shall be lawful for the said arbitrators or any two of them to arbitrate, determine, and award, of and concerning all and every the matters and things touching which such doubt, difference, or dispute as aforesaid shall have arisen (*h*), and, (if they or any two of them shall see fit so to do), at the expense of the parties in difference, or one of them, to require the aid and take the opinion (*i*) of any surveyors, colliery viewers, counsel, or other person or persons, and to adopt such other measures, and give such directions as shall appear to the said arbitrators, or any two of them, advisable or expedient: AND FURTHER, THAT the parties so doubting, differing, or disputing as aforesaid, and all persons claiming by, from, through, or under them respectively, shall in all things obey, abide by, observe, and perform the award, order, and determination of the aforesaid arbitrators, or of any two of them (*k*), so as the award of the said arbitrators, or of such two of them as shall concur, be made in writing under their hands, and be ready to be delivered to the said parties respectively, or such of them as shall desire the same, within three calendar months next after the third of such three arbitrators for the time being shall have been named (*l*):

Power to arbitrators to hear and determine.

Agreement to abide by the award.

(*h*) See ante, Vol. 3, p. 126, n. (*f*).

(*i*) See ante, Vol. 3, p. 127, n. (*h*).

(*k*) See *Hetherington* v. *Robinson*, 4 Mee. & Wels. 608.

(*l*) See ante, Vol. 3, p. 128, n. (*k*), and the cases, *In re Dodding-*

COLLIERIES BY A DEAN AND CHAPTER.

Agreement to be examined as witnesses, and to produce evidence.

That evidence may be taken on oath.

That arbitrators shall have power to give costs.

THAT THE SAID parties so doubting, differing, or disputing as aforesaid, and all persons claiming by, from, through, or under them respectively, will, if required by the said arbitrators, or any two of them, attend personally and submit to be examined relative to the matters in doubt, difference, or dispute, and will produce to and deposit with the said arbitrators, or any two of them, all such deeds, evidences, letters, papers, and writings, relative to the matters in doubt, difference, or dispute, as shall be in the possession or power of the said parties respectively, or the persons claiming as aforesaid, and as the said arbitrators, or any two of them, may wish to peruse or inspect, and will, so far as in them respectively may lie, furnish or cause to be furnished all such documents, proofs, and evidence, and do or cause to be done all such acts and things for better enabling them to make the said award, as the said arbitrators, or any two of them, shall require (*m*): THAT THE SAID parties respectively, and all persons claiming by, from, through, or under them respectively, if examined, and all other witnesses who shall be produced to give evidence before the said arbitrators, or any two of them, of and concerning the premises, (if required by the opposite party, or the party against whom such witness shall be produced), and also all surveyors, colliery viewers, and other persons (except counsel) who may be called upon by the said arbitrators, or any two of them, as aforesaid, shall (if the same shall be thought proper by such arbitrators) be examined upon oath, or upon their affirmation in cases where affirmation is allowed by law instead of oath (*n*): THAT THE costs, charges, and expenses of and attending, or in anywise relating to any arbitration, including the compensation to be made to the arbitrators for their trouble, and the fees and compensation to be made to any surveyors, colliery viewers, counsel, or other person

---

ton v. *Bailward*, 5 Bing. N. C. 591; *Hallett* v. *Hallett*, 5 Mee. & Wels. 25.

(*m*) See ante, Vol. 3, p. 129, n. (*l*).

(*n*) See ante, Vol. 3, p. 130, n. (*m*); *Hodsoll* v. *Wise*, 4 Mee. & Wels. 536.

or persons who may be called on as aforesaid, shall be in the discretion of the said arbitrators, or any two of them, who shall direct by whom and to whom, and in what manner, the same shall be paid, and who shall be at full liberty, if they see fit, to direct that any of such costs and expenses shall be reckoned as between attorney and client, and not as between party and party (*o*): AND THAT any submission or reference to arbitration, under or by virtue of these presents, may be made a rule of any of her Majesty's courts at Westminster, according to the statute in that case made and provided, if any such court shall so please, and either party shall be at liberty to apply to the said court for that purpose, and to instruct counsel to consent thereto for the other party (*p*). IN WITNESS &c.

That any submission to arbitration may be made a rule of court.

(*o*) See ante, Vol. 3, p. 131, n. (*o*); *Hetherington* v. *Robinson*, 4 Mee. & Wels. 608. As to the power of an arbitrator to award an indemnity, see *Brown* v. *Watson*, 6 Bing. N. C. 118.

(*p*) See ante, Vol. 3, p. 133, n. (*q*); and *Doe* d. *Oxenden* v. *Cropper*, 2 Per. & Dav. 490.

XI.

OF A COLLIERY.

LEASE *of a* COLLIERY *and the Appurtenances, with the* NECESSARY POWERS *for* WORKING *the* MINE *and* SELLING *the* COAL. RESERVATION *of Right to Use Lessee's* WAGGON-WAYS. RESERVATION *of a* RENT CERTAIN, *for a certain number of Tons to be Wrought out of certain* SEAMS *in* SPECIFIED PROPORTIONS, *and similar Reservation of* ADDITIONAL *Rents for extra Quantities.* POWERS *of* DISTRESS *and* RE-ENTRY. COVENANTS *by* LESSEE (*amongst others*) *to Work Seams in* SPECIFIED PROPORTIONS, *and to Sink certain Pits to certain Seams, and there Raise the Coal from those Seams; that Lessor may Sink Pits, &c., before the End of the Term.* DEFICIENT WORKINGS *of any Year to be made up by* OVERPLUS WORKINGS *of* SUCCEEDING, *but* NOT *of* PRECEDING *Years.* USUAL COVENANTS *by* LESSOR. LESSEE *to have the* OPTION *of another Pit when Vacant.* AGREEMENTS *for* VALUATION *and Purchase at the* COMMENCEMENT *and* END *of the Term, of the* LIVE *and* MOVEABLE AND FIXED STOCK.

Parties. THIS INDENTURE, made, &c. BETWEEN A. B., of &c. [*lessor*], of the one part; and C. D., of &c. [*lessee*],

Witnesseth. Consideration. of the other part: WITNESSETH, that, in consideration of the yearly and other rents and sums of money hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained on the part of the said C. D., his executors, administrators, and assigns, to be observed

Demise; and performed, he the said A. B. hath demised, leased,

and to farm letten, and by these presents doth demise, lease, and to farm let, unto the said C. D., his executors, administrators, and assigns: ALL THAT colliery, coal mine, and seams of coal, as well opened as unopened, called or known by the name of —— colliery, lying and being in the said county of ——, and within and under the lands and grounds of the said A. B. there situate, and which said colliery was lately in the occupation of Messrs. ——, and is now in the occupation of the said C. D., TOGETHER WITH the house used as a public-house, now in the occupation of ——, and also the pitmen's houses and other houses of and belonging to and used with the said colliery, and lately occupied by the said Messrs. ——, and their under-tenants, and now by the said C. D. or his under-tenants: AND ALL outhouses, edifices, buildings, engines, gins, engine houses, hovels, lodges, staiths, spouts, boilers, cylinders, pumps, waggons, waggon-ways, rails, sleepers, stock of corn and hay, and all other colliery stock, horses, machines, utensils, and all and singular other materials, articles, rights, incidents, and appurtenances whatsoever, and of what nature or kind soever, to the said colliery, coal mine, and seams of coal, in anywise belonging or appertaining, or to or with the same, now or at any time heretofore, commonly held, occupied, or enjoyed, or taken or known as part, parcel, or member thereof: TOGETHER ALSO with full and free liberty for the said C. D., his executors, administrators, and assigns, to use the present, and dig, sink, and make new or other pits, trenches, grooves, drifts, water-gates, water-courses, and other works, and to use and repair the present, and lay, place, and make, and from time to time amend and repair, any new or other waggon-ways, byeways, and sideways, in, upon, over, and along any of the lands and grounds of him the said A. B., and to use and repair the present, and make and place new or other staiths on such lands, for the winning and working, depositing, vending, leading, and carrying on the said colliery, and the coals proceeding therefrom, and to use the present, and make and build new or other steam-engines and other engines, for the purpose of winning, working, and carrying on the said colliery,

OF A COLLIERY.

The Colliery;

—and houses thereto belonging.

General words.

Together with the necessary powers for carrying on the colliery, and selling the coals.

OF A COLLIERY.

and also to use the present, and make and build such new and other houses, hovels, and lodges, upon any such parts of the lands and grounds under which the said coal mine or seams of coal is or are situate, as he the said C. D., his executors, administrators, or assigns, shall think most convenient for the workmen to be employed in carrying on the said colliery, together also with all such other liberties and powers for winning, working, and carrying on the said colliery, as are usual in colliery leases in the counties of —— and ——: EXCEPT AND ALWAYS RESERVED (*a*) unto the said A. B., his heirs and assigns, and to his and their servants, and the tenants for the time being of the lands and grounds upon, over, and along which way-leave is hereby granted, and to the tenants and occupiers of the lands and grounds under which the said coal mine or seams of coal is or are situate, and over which way-leave is hereby granted, liberty and passage over and along the waggon-ways and other ways hereby granted, with workmen, horses, cattle, and other animals, and with waggons with waggon wheels only, and drawn by one horse only, for the purpose of leading dung, manure, or compost, and for all other purposes of husbandry, doing as little damage as may be to such waggon-ways, and without being liable to pay any compensation for the use of such waggon-ways: TO HAVE AND TO HOLD the said colliery, coal mine, and seams of coal, buildings, engines, way-leave, liberties, privileges, powers, and authorities, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, for the term of twenty-one years, to be computed from the —— day of —— now last past, and thence fully to be complete and ended: YIELDING AND PAYING therefore, unto the said A. B., his heirs and assigns, yearly and every year during the continuance of the said term of twenty-one years, the certain rent or sum of £—— for eighteen hundred tons of coals (namely, for nine hundred tons of the —— and —— seams of coal, for ——

Reservation of a right for the lessor, his servants and tenants, to use the lessee's waggon-ways for farming purposes.

Habendum for a term.

Reddendum of a certain yearly rent, for a certain number of tons, whether wrought or not;

(*a*) As to exceptions and reservations, and the distinction between them, see supra, p. 44, n. (*a*).

tons of the —— seam of coal, and for —— tons of the —— and —— seams of coal) vended by sea sale or otherwise, (other than small and refuse coal), whether such number of —— tons of coals of the different seams, and in the proportions aforesaid, shall be yearly wrought or not, during each year of the said term of twenty-one years, the said certain yearly rent or sum of £—— to be payable and paid on the —— day of —— and the —— day of —— in every year, by equal portions, and the first payment thereof to be made on the —— day of —— now next ensuing: AND ALSO YIELDING AND PAYING unto the said A. B., his heirs and assigns, over and above the said certain yearly rent of £——, the further rent or sum of £—— for every ton of coals produced by and wrought out of the said —— and —— seams of coal, (other than small or refuse coal), which shall be wrought and gotten out of the said colliery, and disposed of for sea sale, or otherwise, over and above the said quantity of —— tons of the said —— and —— seams of coal, being part of the said —— tons, for which the said certain yearly rent of £—— is hereby reserved: AND ALSO YIELDING AND PAYING, [*similar reservation of tonnage rents for coals wrought out of the different other seams*]: AND ALSO YIELDING AND PAYING unto the said A. B., his heirs and assigns, over and above the said rents hereinbefore reserved, the further rent or sum of £—— for every ton of small or splint coal which shall be wrought and gotten out of the said colliery, and which shall be disposed of for sea sale, or otherwise, the said further and additional rents hereinbefore reserved to be paid and payable on such —— day of —— and —— day of ——, as shall first happen in every year of the said term of twenty-one years, after the same several rents shall have respectively accrued: THE SAID several rents or sums of money hereinbefore reserved, to be paid free and clear of and from all existing and future taxes, charges, rates, assessments, impositions, payments, and outgoings whatsoever: PROVIDED NEVERTHELESS, and it is hereby agreed and declared between and by the parties to these presents, that the said C. D., his executors, administrators, and assigns, are not meant nor are to be behind

OF A COLLIERY.

—and an additional rent for any further number of tons wrought out of certain seams;

—and so, for certain other seams;

—and of an additional rent for small coal;

—the rents to be paid free from deduction.

Proviso, explaining as to the coals to be wrought at the certain rent.

OF A COLLIERY.

the said yearly quantity of —— tons, but that they shall be entitled and bound to win, work, and carry away, in each year of the said term of twenty-one years, as many tons of coal, in the proportions and at the prices following; that is to say, namely, for each ton of the —— and —— coal the sum of ——, for each ton of the —— coal the sum of ——, for each ton of the —— and —— coal the sum of ——, and for each ton of the small or splint coal the sum of ——, for sea sale or otherwise, as together, according to the quantities of the different kinds of coal, will amount to the said certain yearly rent of £——:

Powers of distress and re-entry.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if it shall happen that the said several yearly and other rents or sums of money hereby reserved, or any of them, or any part thereof respectively, shall be behind and unpaid by the space of forty days next over or after any of the said days whereon the same ought to be paid as aforesaid, and the same shall have been demanded on the expiration of the same forty days or at any time afterwards, and not paid at the time of such demand, then and in every such case it shall be lawful for the said A. B., his heirs or assigns, not only to stop and hinder the leading of coals from the said colliery, but also to enter into and upon all and every the said colliery and other the premises hereinbefore demised, or expressed and intended so to be, and to distrain all and every or any of the coals which shall then be laid or deposited, and also to distrain the horses, gins, waggons, carts, and other carriages, ropes, rollers, and other materials and things whatsoever, used in or about the colliery, staiths, waggon-ways, and premises hereinbefore demised, or expressed and intended so to be, and the distress and distresses then and there found, to take, lead, drive, and carry away, sell and dispose of, according to law, until the said several rents or sums of money, and every of them, and every part thereof respectively, and also reasonable satisfaction for the costs and charges of such distresses and sales, shall have been fully satisfied, rendering the overplus (if any) unto the said C. D., his executors, administrators, and assigns, and also into and

upon the colliery and other the premises hereinbefore demised, or expressed and intended so to be, or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess, and enjoy as in his and their former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, in manner following, that is to say, [*covenants for payment of the rents,—and of the taxes and outgoings,—and to make compensation for damage done, supra, pp.* 149, 150]: AND ALSO, THAT he the said C. D., his executors, administrators, or assigns, shall and will, in every year during the said term hereby granted, win and work three equal sixth parts of the whole coal which shall be wrought and gotten out of the said colliery, from and out of the said —— and —— seams, two other equal sixth parts thereof from and out of the said —— seam, and the remaining equal one sixth part thereof from and out of the said —— and —— seams: AND THAT, if the said C. D., his executors, administrators, or assigns, shall, in any year of the said term hereby granted, win and work from and out of the said —— and —— seams a greater quantity than three equal sixth parts of the whole coal which shall in such year be won, wrought, and gotten out of the said colliery, then and in such case, and so often as the same shall happen, he the said C. D., his executors, administrators, and assigns, shall and will pay or cause to be paid unto the said A. B., his heirs or assigns, for every ton of such coals so to be wrought and gotten out of the said —— and —— seams of coal, exceeding the quantity of three equal sixth parts of the whole, and which shall be disposed of for sea sale or otherwise, the additional rent or sum of threepence, to become due and to be paid at such times and in such manner as is hereinbefore mentioned and appointed for the payment of the several tonnage rents hereinbefore reserved, and to be attended with such powers of distress and entry as are hereinbefore contained with respect to the several rents hereinbefore reserved: AND FURTHER, THAT, anything herein con-

OF A COLLIERY.

Covenants by lessee;

—usual;

—and to work the seams in specified proportions;

—and to pay an additional rent for a greater proportion of coal got out of a particular seam;

—and on no

OF A COLLIERY.

account to take more than a certain proportion out of certain seams;

tained to the contrary thereof notwithstanding, he the said C. D., his executors, administrators, and assigns, shall not nor will, in any year or years of the said term hereby granted, win, work, and carry away, from and out of the said —— and —— seams of coal, a greater quantity or proportion of the whole coal which shall in such year be won and wrought than four equal sixths parts thereof, without the consent in writing of the said A. B., his heirs or assigns, first obtained: AND ALSO, THAT he the said C. D., his executors, administrators, or assigns, or some or one of them, shall and will, before the expiration of four years from the commencement of the said term, dig and sink the pits called the —— and the —— pit to the —— seam of coal, and also shall and will, at all times thereafter during the continuance of the said term, win, work, and raise the coal to be wrought and gotten out of the said —— seam of coal at the said pits called the —— pit and the —— pit: AND ALSO, THAT he the said C. D., his executors, administrators, and assigns, shall and will work, manage, and carry on the said coal mine, seams of coal, and colliery hereinbefore demised, or expressed and intended so to be, in a fair and orderly manner, according to the actual course and method of working collieries on the river —— (*b*): AND SHALL NOT nor will do or commit, or willingly suffer to be done or committed, any negligent or wilful act, matter, or thing, whereby the said colliery hereby demised, or any part thereof, shall or may be drowned or over-burthened with water or styth from any wastes in the said colliery, or from any neighbouring colliery, or which may occasion or bring any thrust or creep upon the said colliery hereby demised, or may hinder, stop, or obstruct the water-courses, passages, or drifts in or belonging to the same: AND SHALL and will, in the working of the said colliery, leave a barrier of coal twenty yards in breadth at least against any other colliery adjoining the same: AND ALSO SHALL and will, at his and their own cost, on the first Monday in every calendar month during the term hereby granted, if

—and to sink certain pits to a certain seam, and raise the coal from that seam at those pits;

—and to work the colliery in a proper manner;

—and not to do any act whereby the colliery may be injured;

—and leave a barrier against any other colliery;

—and deliver to the lessor monthly accounts of the workings;

(*b*) See supra, p. 153, n. (*d*).

thereunto requested by the said A. B., his heirs or assigns, or his or their agent or agents, make and deliver to him the said A. B., his heirs or assigns, a true and perfect account, under the hands of the viewer or overman and of the staithman employed by the said C. D., his executors, administrators, or assigns, in and about the said colliery, of all such quantities of coal as shall, at the end of the calendar month next preceding, have been won and wrought out of the said colliery, and also a distinct and separate, true and perfect account of all such numbers of tons of the respective seams aforesaid, as at the end of such calendar month shall have been led or carried away from the said colliery: AND ALSO, THAT it shall be lawful for the said A. B., his heirs and assigns, and his or their agents, from time to time and at all times during the term hereby granted, to have free access to and liberty to inspect, peruse, and examine the staithman's and overman's books of presentment and leadings, relating to the working and leading of coals wrought and gotten out of the said colliery: AND ALSO, THAT it shall be lawful for the said A. B., his heirs or assigns, and his or their agents or servants, at any time or times during the said term hereby granted, to take an account in writing of the number of tons, waggon-loads, or other quantities of coal which shall be wrought or led or carried away out of or from the said colliery, and to measure or gauge at the pits or staiths by which the coals of the colliery are drawn to bank, or elsewhere, as he or they shall think fit, all or any of the waggons, wains, carts, or carriages employed in leading coals from such pit or pits; and if, upon measuring the waggons or other carriages, the same or any of them shall be found to carry a greater measure than at the last preceding admeasurement, then and in such case the said A. B., his heirs or assigns, or his or their agents or servants, shall and may stop and hinder the said waggons and carriages so carrying over-measure from carrying coals from the said colliery, until the said C. D., his executors, administrators, or assigns, shall have reduced the same to one measure or gauge, and in every such case of waggons or other carriages being found to carry such greater measure, all and every

—and that lessor may inspect the colliery books;

—and take accounts in writing;

—and to gauge the waggons;

—and stop those carrying over-measure;

—which are to be deemed to have carried

OF A COLLIERY.

over-measure for a specified time previously.

the waggons and carriages so found to carry over-measure, shall be reckoned and accounted to have carried such over-measure for the space of three calendar months then next preceding, unless there shall have happened an admeasurement of the waggons or carriages within the last-mentioned time; and then, and in such case, from the time of such last-mentioned admeasurement, and in filling the said waggons or other carriages, the good coals are not to be mixed with the small or refuse coal of the same, but to be kept separate and distinct therefrom: AND FURTHER, THAT &c. [*covenant to allow the lessor, his heirs and assigns, viewers, agents, and servants, to inspect the workings and to give due facilities, supra, p.* 151—*and that lessee will erect fences and gates, and provide gate-keepers, and make compensation for damage done by their neglect or the want of fences, supra, p.* 156]: AND ALSO SHALL and will, at the expiration or sooner determination of the said term hereby granted, yield and deliver up unto the said A. B., his heirs or assigns, the quiet and peaceable possession of the said colliery, way-leaves, powers, privileges, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, and every part and parcel thereof, (including such of the water-courses as shall be necessary for working the remaining part, if any, of the said colliery), in as good order and condition as the then state of the colliery will admit of: AND FURTHER, THAT it shall be lawful for the said A. B., his heirs or assigns, or his or their next succeeding lessee or lessees, at any time within six calendar months next preceding the expiration or sooner determination of the said term hereby granted, to enter into and upon the said colliery and premises, and to sink pits, drive drifts, and make trenches and grooves, and all other works necessary for carrying on the said colliery, after the expiration or other sooner determination of the said term hereby granted, he and they, and his and their agents or workmen, obstructing the working of the said colliery as little as possible: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if the said A. B., his executors, administrators, or assigns, shall not in each year of the

Covenants by lessee as to viewing workings and making good gates, &c., and damage done;

—and that he will yield up the premises at the end of the term;

—and that lessor, or the incoming tenant, may sink shafts, &c., six months before expiration of term.

Proviso, that a deficiency in the workings of any year may be made up in any subsequent

OF A COLLIERY.

said term hereby granted, work, dig, and lay above ground, or lead and carry away from and out of the said colliery, the full yearly quantity or number of one thousand eight hundred tons of coals, of the different seams of the said colliery, and in the several proportions hereinbefore mentioned, so as to make up the said certain yearly rent of £——, then and in such case, and so often as the same shall happen, it shall be lawful for him and them, or any of them, in any following year or years of the said term hereby granted, to win, work, get, lead, and carry away from and out of the said colliery, as many tons of coals of the different seams thereof, according to the different rents or sums of money hereinbefore reserved for the coals to be wrought and got out of such respective seams, and according to the different proportions in which the same seams are hereinbefore agreed to be wrought, as will together make up or amount to the full number of tons which, according to the true intent and meaning of these presents, he the said C. D., his executors, administrators, or assigns, shall have a right to win, work, get, lead, and carry away, in each year of the said term hereby granted, for the said certain yearly rent of £——, without paying any other rent or sum of money for the same, it being the true intent and meaning of the said parties to these presents, that he the said C. D., his executors, administrators, and assigns, may yearly and every year during the continuance of the said term hereby granted, work, lead, get, and carry away, from, forth, and out of the said colliery, so many tons of coals of the different seams thereof, at the different rents or sums, and according to the different proportions aforesaid, as will in all or any of the then remaining year or years of the said term, at such respective prices aforesaid, amount to or make up the deficiency or deficiencies then existing in the yearly quantity of one thousand eight hundred tons of coals, for the said certain yearly rent or sum of £——, which shall not have been actually wrought and gotten out of the said colliery, in any one or more of the then preceding years of the said term hereby granted, and for which said yearly quantity of one thousand eight hundred tons of coals, the said certain yearly rent of £——

year, without additional payments;

OF A COLLIERY.

is hereinbefore made payable, whether the same shall be wrought and obtained or not: PROVIDED NEVERTHELESS, that the overplus workings and leadings of any preceding years of the said term are not to come in aid of, or make good the deficiency of the workings and leadings in any following year or years, but the rent hereby reserved in respect of such previous overplus workings, is to be paid when and as the same shall become due and payable, [*lessee to have coals for the use of the engines and workmen free of rent, supra, p.* 149]: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, that he the said C. D., his executors, administrators, or assigns, shall and will, within twelve months next after the expiration or other sooner determination of the said term hereby granted, well and sufficiently secure all the then useless pits, and level the pit heaps which are already made, or shall be by him or them made by virtue of these presents, in and upon any of the lands and grounds under which the said coal mine and seams of coal do lie, so as to render the said lands and grounds fit for ploughing; and shall and will, from time to time and at all times after the expiration or other sooner determination of the said term hereby granted, well and sufficiently save harmless and keep indemnified the said A. B., his heirs, executors, administrators, and assigns, and every of them, his, their, and every of their goods and chattels, lands and tenements, of and from all damages, costs, charges, and expenses, by reason of any such pits or pit heaps not being so filled up or levelled as aforesaid: [*Covenant by A. B. with C. D., his executors, administrators, and assigns, for quiet enjoyment, supra, p.* 157, "without any let, &c., of, from, or by him the said A. B., his heirs or assigns, or any other person or persons whomsoever"]: AND FURTHER, THAT in the regular working and carrying on of the said colliery, the said C. D., his executors, administrators, and assigns, or any of them, shall not be compelled to clear away or to penetrate or work through any creep, thrust, or old waste which may now be in the said colliery, or in any of the seams of coal thereof, for the purpose of getting at and

—but the overplus workings of preceding years are not to go to make up the deficiencies.

Coals used in the colliery to be rent-free.

Covenant by lessee at the end of the term to secure useless pits, and indemnify the lessor.

Covenants by lessor for quiet enjoyment;

—and that lessee shall not be bound to work through any creep, &c.;

OF A COLLIERY.

winning and working any tract or quantity of coal now left and being in any of the said seams: AND FURTHER, THAT it shall be lawful for the said C. D., his executors, administrators, and assigns, from time to time and at all times during the said term hereby granted, to make, place, and lay one or more waggon-way or waggon-ways, railway or railways, byeway or byeways, and sideway or sideways, in, upon, over, and along such parts of the lands and waste grounds of the said A. B., his heirs or assigns, for the purpose of leading and carrying away the coals to be wrought and produced from the said colliery to the river ——, for shipping and vending the same, and to make and place spouts and staiths, and such other erections and buildings as he the said C. D., his executors, administrators, or assigns, shall deem proper and necessary for that purpose, he and they paying to the said A. B., his heirs or assigns, and his and their tenants and farmers, full satisfaction and compensation for the damage or spoil of ground thereby occasioned, but without paying any additional rent or sum of money for such wayleave, and allowing to the said A. B., his heirs and assigns, the option, at the expiration or other sooner determination of the said term hereby granted, of taking and purchasing, at a fair valuation, the machinery, waggons, ropes, and other implements, stock and materials which shall be used on or in connexion with the said waggon or other ways: AND FURTHER, THAT, in case the coal-pit called the ——, now in the possession of one M. N., as tenant thereof to the said A. B., shall be by him, his executors, administrators, or assigns, at any time hereafter during the said term hereby granted, surrendered, or given up to the said A. B., his heirs or assigns, then and in such case he the said C. D., his executors, administrators, or assigns, shall have the option of becoming the tenant thereof for such term of years as shall be equal to the residue then to come and unexpired of the said term hereby granted, subject to such yearly and other rents and sums of money, and with and under such powers, covenants, conditions, restrictions, and agreements as shall be considered proper for and applicable to the same: AND FURTHER,

—and that lessee may lay waggon-ways and other ways, staiths, spouts, &c.;

—the lessor to have the option of taking the same at the end of the term;

—and that, if a certain other pit of the lessor's become vacant during the term, the lessee shall have the option of taking it;

—and that les-

OF A COLLIERY.

see, within a certain time from the end of the term, may lead coals then at bank.

THAT it shall be lawful for the said C. D., his executors, administrators, and assigns, at any time or times within the space of twelve calendar months next after the expiration or other sooner determination of the said term hereby granted, to have, take, lead, and carry away, and sell or dispose of, all such coals as shall, at the expiration or other sooner determination of the said term hereby granted, be ready wrought and laid above ground at the pit or shaft, pits or shafts, and spouts of and belonging to the said colliery: AND IT IS HEREBY agreed, that all the waggons to be employed in carrying coals from the said colliery shall be of one measure, and in case any alteration shall at any time be made in the size or measure of the said waggons, three calendar months' previous notice in writing of such alteration shall be given to the said A. B., his heirs or assigns, or his or their agent or agents for the time being, or left for him or them at his, her, or their dwelling-house or place of abode, [*Power to C. D., his executors, administrators, or assigns, to determine the term at the end of the sixth or any subsequent year, on giving or leaving twelve calendar months' previous notice in writing, as in the last clause—see supra, p.* 159]: AND IT IS HEREBY agreed and declared between and by the said parties to these presents, that a fair and proper valuation shall be forthwith made of the several fire and steam-engines, engine-houses, boilers, cylinders, spouts, staiths, waggon and rail ways, and other articles of the fixed stock or materials, of and belonging to the said colliery, and that copies of such valuation, when so made, shall be signed by the person or persons making the same, and also by the said parties hereto, who shall then each take and keep one of such copies so signed as aforesaid, and that at the expiration or other sooner determination of the said term, a similar valuation shall be made of the fixed stock and materials which shall then belong to and be used in the said colliery, and if the amount of the said valuation to be forthwith made as aforesaid, shall exceed the amount of the valuation to be made at the expiration or other sooner determination of the said term, then and in such case the said C. D., his executors, administrators, or assigns, shall and will pay or cause to be paid,

All the coal waggons to be of one measure.

Lessee to have power to determine the term.

Agreement for valuation of the stock and machinery at the commencement and the end of the term, and the payment of the balance by the proper party.

OF A COLLIERY.

to the said A. B., his heirs, executors, administrators, or assigns, such sum or sums of money as shall be necessary to make up the difference in the amounts of the said valuations; but if the amount of the said valuation, to be made at the expiration or other sooner determination of the said term hereby granted, shall exceed the amount of the valuation thereof to be forthwith made as aforesaid, then and in such case he the said A. B., his heirs, executors, administrators, or assigns, shall and will pay or cause to be paid to, or permit and suffer the said C. D., his executors, administrators, or assigns, to retain to and reimburse himself or themselves out of the said rents hereby reserved and then remaining unpaid, such sum or sums of money as shall be necessary to make up the difference in the amounts of the aforesaid valuation: AND IT IS HEREBY further agreed and declared between and by the said parties to these presents, that the live and movable stock and materials of and belonging to the said A. B., and now used in and about the said colliery, shall be forthwith properly valued, and that he the said C. D., his executors, administrators, or assigns, shall and will pay or cause to be paid to the said A. B., his executors, administrators, or assigns, immediately after such last-mentioned valuation shall have been made, the full amount thereof in four bills, to be drawn by the said A. B. upon and accepted by the said C. D., and to be payable respectively at three, six, nine, and twelve months from the —— day of —— last, each of such bills to be drawn for one-fourth part of the said amount: AND IT IS HEREBY further agreed and declared between and by the said parties to these presents, that the live stock and materials of and belonging to the said colliery, at the expiration or other sooner determination of the said term, or then used and employed in leading and carrying away the coals to be wrought and gotten thereout, and also all the coals which shall be then wrought and gotten thereout, and which shall then be unsold and shall be lying above ground at the pits or shafts and spouts of and belonging to the said colliery, (not exceeding the quantity of —— tons), shall, at the expiration or other sooner determination of the said term hereby granted, be fairly and properly valued as the stock and materials of a

Live and movable stock to be forthwith valued and paid for by the lessee in bills of exchange, at certain dates;

—and to be valued (with the stock of coals) at the end of the term, and paid for by the lessor.

OF A COLLIERY.

working or current going colliery; and that the said A. B., his heirs, executors, administrators, or assigns, shall and will, within twelve calendar months after such valuation as is lastly hereinbefore directed shall have been made, pay or cause to be paid to the said C. D., his executors, administrators, or assigns, the full amount or sum thereof, and that thenceforth the said live stock and materials and coals shall belong to and be the property of the said A. B., his heirs, executors, administrators, or assigns for ever, according to the different natures and qualities of the same: AND &c. [*arbitration clauses, supra, p.* 159, *extending the introductory part so as to meet the case of a disputed valuation*]: IN WITNESS &c.

Arbitration clauses.

XII.

WAY-LEAVE.

LEASE *of a* WAY-LEAVE. RESERVATION *of a* CERTAIN RENT—*of* TONNAGE RENTS—*of a* COMPENSATION RENT—*of a* PENAL RENT—*and of a stated* RENT *in* COALS (*a*). USUAL COVENANTS *and* CLAUSES.

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c. [*lessor*], of the first part; and C. D., of &c., E. F., of

---

Meaning of the term way-leave.

(*a*) A way-leave is a private right of way over another man's land, and is commonly applied to a right of way granted for the carriage of coals and other minerals to their place of sale or shipment. It will, therefore, be convenient to refer to some of the leading authorities on points connected with private rights of way, bearing in mind that much additional light will be derived from a consideration of the cases which relate to lights, water-courses, and other easements, but which our limits will not permit us to notice. The cases, too, which relate to public rights of way may be advantageously consulted.

Title to a right of way;

A private right of way over another man's land is an easement, (5 B. & C. 229), and a title to it can therefore be made only by grant, express or implied. (1 Wms. Saund. 323, n. (6)).

—by express grant;

An express grant of a freehold interest in a right of way must be

&c., and G. H., of &c. [*lessees*], (for and on behalf of themselves and the other owners of —— colliery, in the said WAY-LEAVE.

by deed; (*Fentiman* v. *Smith*, 4 East, 107; *Hewlins* v. *Shippam*, 5 B. & C. 229); and probably the law is the same in the case of a chattel interest. (Co. Litt. 85. a.; 5 B. & C. 229). But a right of way cannot be created by a bargain and sale, for by a bargain and sale nothing but a use passes, and there cannot be a use of a thing not in esse. (*Beaudeley* v. *Brook*, Cro. Jac. 189). It is apprehended, however, that the words "bargain and sell" would now be held to imply a grant, for any words which clearly indicate an intention that a right of way shall pass, be they in the shape of a covenant or otherwise, are sufficient to constitute a grant. (*Holmes* v. *Sellers*, 3 Lev. 305; *Lord Mountjoy's case*, Godb. 17; S. C. 1 And. 307; Moore, 174). But a lease of a piece of ground, described as abutting on "an intended way of thirty feet wide," does not constitute a grant of a way of that width, it is sufficient that a way of convenient width is left; (*Harding* v. *Wilson*, 2 B. & C. 96; 3 Dow. & Ry. 237); and, therefore, the draftsman should always take care that his draft specifies the width of which the way is to be, in such terms as to bind the grantor. Where land was granted and described as abutting on a certain road, but between which and the road in one part was a narrow slip of land, it was held, that the grantee had a right of way over the slip; (*Roberts* v. *Karr*, 1 Taunt. 495); but a grant of a right of way along certain lands from A. to B. does not include a right of making a transverse road. (*Senhouse* v. *Christian*, 1 T. R. 560; see, too, *Monmouth Canal Company* v. *Harford*, 1 C., M. & R. 614; S. C. 5 Tyr. 85). A right of way may be granted by the award of commissioners of partition over the lands of one party to those of another interested in the partition. (*Lister* v. *Lister*, 3 You. & Col. 540).

—by necessity, or a necessarily implied grant;

A title by implied grant may be either by necessity or prescription. The title by necessity is where the purchaser of land has no lawful access to it, but over other land of the vendor, and in that case he obtains such right of way by necessary implication. (*Clarke* v. *Cogge*, Cro. Jac. 170; 1 Wms. Saund. 323, n. (6); see, too, *Morris* v. *Edgington*, 3 Taunt. 24; *Buckby* v. *Coles*, 5 Taunt. 311; *Reignolds* v. *Edwards*, Willes, 282). And where a trustee sold land to which there was no access but over land of his own, a right of way over that land passed to the purchaser by necessary implication. (*Howton* v. *Frearson*, 8 T. R. 50). And the law is the same between lessor and lessee. (*Hinchcliffe* v. *The Earl of Kinnoul*, 5 Bing. N. C. 1). A parson has a right of way by necessity to carry away his tithes. (See *Cobb* v. *Selby*, 1 Bos. & Pul. N. R. 466; *James* v. *Dods*, 2 Cro. & Mee. 266; S. C. 4 Tyr. 101). A way of necessity cannot be pleaded without shewing its origin in the unity of possession of

WAY-LEAVE. Witnesseth, county of ——), of the other part: WITNESSETH, that, for and in consideration of rents hereinafter reserved, and

---

the lands from and over which it passes; if the origin cannot be shewn, it must be pleaded as a way by prescription. (1 Wms. Saund. 323, n. (6); *Bullard* v. *Harrison*, 4 Mau. & Sel. 387). A way of necessity is not acquired by the owner of the lands over which an old way by prescription passed, having destroyed that way; in such case the claimant's remedy is to have the old way restored. (*Reignolds* v. *Edwards*, Willes, 282). For an old way is not destroyed by the owner of the land making a new way. (*Adeane* v. *Mortlock*, 5 Bing. N. C. 236; see, too, *Payne* v. *Shedden*, 1 Moo. & Rob. 382). A way of necessity ceases with the necessity which gave rise to it; as when the grantee purchases lands by which he can get access to his former lands; (*Holmes* v. *Goring*, 2 Bing. 76; S. C. 9 J. B. Moore, 166); and although it has been imagined, that under certain circumstances the way will be revived, (see the cases infra), yet it seems that in many instances, what is called a revival, is in fact the creation of a new way by necessity. (See further, with respect to ways by necessity, Com. Dig. *Chimin*, D. 3; *Jorden* v. *Atwood*, 1 Roll. Abr. 936).

—by prescription, or an implied grant which has ceased to exist;

The title by prescription is where the right of way has been enjoyed without interruption for such time and under such circumstances as the law requires to make good a title of that nature. Before the recent statute, (see infra), an uninterrupted enjoyment for twenty years was considered a sufficient presumption of a former grant which had ceased to exist. (*Campbell* v. *Wilson*, 3 East, 294; *Livett* v. *Wilson*, 3 Bing. 115). But, of course, such a grant could only be presumed where the ownership and circumstances of the property over which the way passed had been such at the commencement of the user of the way, and till within twenty years, as rendered a valid grant feasible. Thus, where, at the commencement of the user, and till within twenty years, the land was in tenancy, and the landlord had no knowledge of the easement enjoyed, no grant could be presumed. (*Daniel* v. *North*, 11 East, 372). And so where the land belonged to a rectory, no right of way could be acquired by prescription. (*Barker* v. *Richardson*, 4 B. & Ald. 579). Or where unity of possession of the land over which the way passed, and for which it was prescribed, was proved. (*Wright* v. *Rattray*, 1 East, 377; see, however, *Codling* v. *Johnson*, 9 B. & C. 933; S. C. 4 Man. & Ry. 671). A man may, however, prescribe for a right of way which passes in part over intervening land of his own. (*Jackson* v. *Shillito*, cited 1 East, 381; see, however, *Sloman* v. *West*, Palm. 387; S. C. 2 Roll. Rep. 397; *Wright* v. *Rattray*, ubi supra). Where a right of way had been attached to a house having a yard, and the occupier of the house had ceased to use it, it was held, that the

of the covenants, conditions, and agreements hereinafter contained, and on the part of the said C. D., E. F., and

WAY-LEAVE.

occupier of a piece of land which had been detached from the yard, had no claim to the right of way. (*Bower* v. *Hill*, 2 Bing. N. C. 339; and see further, with regard to ways by prescription, *Sampson* v. *Appleyard*, 3 Wils. 272; *Simpson* v. *Lewthwaite*, 3 B. & Ad. 226; *Vallance* v. *Savage*, 5 Moo. & Pay. 576). With respect to the manner in which a way by prescription should be pleaded, see *Blockley* v. *Slater*, 1 Lutw. 119; *Warren* v. *Sainthill*, 2 Ventr. 185; *Rider* v. *Smith*, 3 T. R. 766; *Houghton* v. *Butler*, 4 T. R. 364; 1 Wms. Saund. 113 a, n. (1); *Bertie* v. *Beaumont*, 16 East, 33; *Stott* v. *Stott*, 16 East, 343; *Proud* v. *Hollis*, 1 B. & C. 8; *Hollis* v. *Proud*, 2 Dow. & Ry. 31; *Large* v. *Pitt*, Peake's Add. Cases, 152; Bull. N. P. 74.

—under the Statute of Limitations (2 & 3 Will. 4, c. 71) by user.

Much however of the learning, with regard to the title by prescription to rights of way, is now of little avail; for the recent statute 2 & 3 Will. 4, c. 71, has made uninterrupted user for a certain length of time a sufficient title to a right of way. By sect. 2 of that statute, it is enacted, that no claim of way over any land, (whether belonging to the crown, or to any ecclesiastical or lay person, or body corporate), when such way shall have been actually enjoyed by any person claiming right thereto, without interruption, for the period of twenty years, shall be defeated or destroyed by shewing only, that such way was first enjoyed at any time prior to such period of twenty years; but such claim may nevertheless be defeated in any other way by which the same before the passing of the act was liable to be defeated; and where such way shall have been so enjoyed as aforesaid for the period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement, expressly given or made for that purpose, by deed or writing. The 4th section of the statute enacts, that each of the above-mentioned periods of years shall be taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question; and that no act or other matter shall be deemed to be an interruption within the meaning of this statute, unless the same shall have been or shall be submitted to, or acquiesced in, for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made. The 5th section of the statute relates to the manner in which claims are to be pleaded, and the 6th section declares, that no presumption shall arise from the enjoyment of an easement for any period less than the period specified in the act. The 7th section provides, that the time during which any person, otherwise capable of resisting a claim, shall have been or shall be an infant, idiot, non compos mentis, feme

WAY-LEAVE. Demise; G. H., their executors, administrators, or assigns, to be observed and performed, he the said A. B. hath granted, de-

covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods mentioned, except only in cases where the right or claim is by the act declared to be absolute and indefeasible. The 8th section enacts, that when any land over which any way shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

Several cases have already occurred on the construction of this act. Thus, it has been held, that a claim by virtue of an enjoyment for twenty years is not defeated by proof of an agreed alteration in the line of way, nor by a temporary non-user under an agreement between the parties; (*Payne* v. *Shedden*, 1 Moo. & Rob. 382); but generally the claimant is bound to shew an uninterrupted enjoyment as of right during the period. (*Monmouth Canal Company* v. *Harford*, 1 C., M. & R. 614). The enjoyment must not have been had secretly, or by stealth, or by tacit sufferance, or by permission asked from time to time on each occasion, or on many occasions, but must have been had openly, notoriously, and without particular leave at the time, by a person claiming to use as a matter of right. (*Tickle* v. *Brown*, 4 Ad. & Ell. 369, 382; see, too, *Beasley* v. *Clarke*, 2 Bing. N. C. 705). So the enjoyment must be continuous, and, therefore, evidence of unity of possession of the lands from and over which the way passes, (see infra as to the extinguishment of rights of way), at a period within twenty years next before the commencement of the action, will defeat the claim; (*Onley* v. *Gardiner*, 4 Mee. & Wels. 496); and so evidence of an obstruction, though not shewn to have been intended expressly against the claimant's right. (*Bailey* v. *Appleyard*, 3 Nev. & Per. 257). The period of forty or twenty years' enjoyment is not the period of forty or twenty years next before the act complained of in the declaration, but next before the commencement of the action or suit. (*Wright* v. *Williams*, 1 Mee. & Wels. 77; *Richards* v. *Fry*, 3 Nev. & Per. 67).

With regard to the construction of the 8th section of the act, it has been decided that the enjoyment for more than twenty years of a way over land in the possession of a lessee for lives, under a

mised, and to farm letten, and by these presents doth grant, demise, and to farm let, unto the said C. D., E. F., and G. H., WAY-LEAVE.

---

bishop's lease, gives no right against the bishop or his successors, and that no title by user, which is not valid against the see, can avail against the lessee; consequently, that no claim of a right of way by user can be established against such lands. (*Bright* v. *Walker*, 1 C., M. & R. 211). But an owner of land who relies on a life estate to defeat a claim of right of way, by user for forty years, must shew that he is the person entitled in reversion expectant on the life estate. (*Wright* v. *Williams*, 1 Mee. & Wels. 77). But it does not seem that any such proof is required on pleading an estate for life under the 7th section to defeat a claim by user for twenty years. (Id. 100).

With respect to the manner in which claims under the above-mentioned statute must be pleaded, and the evidence which may be given on different issues, see all the preceding cases, and *Jones* v. *Brice*, 3 Bing. N. C. 52; *Colchester* v. *Roberts*, 4 Mee. & Wels. 769.

By whom ways are to be repaired.

To return, however, to the general law relating to rights of way. It is well settled, that primâ facie the grantee of a right of way must himself keep it in repair; (*Taylor* v. *Whitehead*, Doug. 745; *Rider* v. *Smith*, 3 T. R. 766; 1 Wms. Saund. 323 a, n. (3)); but the grantor may be liable to repair, either by express contract or by prescription. (Ib.).

How a right of way may be exercised.

A grant of a free and convenient way, as well a horseway as a footway, as also for carts, waggons, wains, and other carriages whatsoever, in, through, over, and along a certain slip of land, with license to make and lay causeways, and to use the way for carrying coals and other things, gives the grantee the right to lay a framed waggon-way for the purpose of carrying coals, that being the usual mode of carrying them in the district in question; (*Senhouse* v. *Christian*, 1 T. R. 560); but does not empower him to make transverse ways across the slip of land. (Ib.). If a man have a right of way to Blackacre, he cannot use the way for the purpose of driving cattle to Blackacre, and then to a place beyond. (*Howell* v. *King*, 1 Mod. 190; *Lawton* v. *Ward*, 1 Ld. Raym. 75; see, too, *Monmouth Canal Company* v. *Harford*, 1 C., M. & R. 614). But a right of way terminating in a highway is a right to go to the highway, and to each and every place beyond to which it leads. (*Colchester* v. *Roberts*, 4 Mee. & Wels. 769). If the right of way be not general, but by a specific line, that line must not be deviated from even if impassable. (*Taylor* v. *Whitehead*, Doug. 745; *Bullard* v. *Harrison*, 4 Mau. & Sel. 387). It is not, however, clear, whether this rule applies to a way which the grantor is liable to repair, and which becomes impassable by his neglect. (See 2 Bl. Comm. 36; Com. Dig. *Chimin*,

WAY-LEAVE.

—of way-leave;

their executors, administrators, and assigns, FULL AND FREE way-leave, and right and liberty of way and passage, in

D. 6; 1 Wms. Saund. 322 a, n. (3)). A prescriptive right of way for horses, carriages, and pigs, does not necessarily include a right of drift way, *i. e.* of a way for horned cattle; (*Ballard* v. *Dyson*, 1 Taunt. 279); but evidence of a right of way for horses, carriages, and pigs, is evidence to go to the jury of a right of drift way. (Ib.). A right of carriage-way implies a right of horseway; (Ib.); but a question has been made, whether a right of horseway confers a right for laden horses. (*Tricky* v. *Yandall*, 2 Bing. 26; S. C. J. B. Moore, 55). A right of way for agricultural purposes does not necessarily include a right of way for general purposes. (*Jackson* v. *Stacey*, Holt, N. P. 455: see, too, *Higham* v. *Rabett*, 5 Bing. N. C. 622). A grant to the owner of some houses of a right of way over a piece of land which abuttted on them, "with all liberties, powers, and authorities incident or appurtenant, needful or necessary to the use, occupation, or enjoyment of the said way or passage," was held to empower the grantee to put down a flag-stone in front of a door, which opened out of his house on the piece of land. (*Gerrard* v. *Cooke*, 2 Bos. & Pul. N. R. 109).

By what words in a conveyance of land, a way appurtenant or used therewith will pass.

A way which is appurtenant to land will pass in a conveyance of the land without any express grant. (*Beaudeley* v. *Brook*, Cro. Jac. 189: *Nicholas* v. *Chamberlain*, Cro. Jac. 121). If a man be seised of two acres, to which a way is *appurtenant*, and grant one acre with all ways, the way in question will pass. (6 Mod. 3: see, too, *Jorden* v. *Atwood*, 1 Roll. Abr. 936). And it has been said, that if a man seised of Blackacre and Whiteacre *uses* a way through Whiteacre to Blackacre, and then grants Blackacre with all ways, the way through Whiteacre will pass. (Com. Dig. *Chimin*, D. 3). It appears, however, to be now settled, that a way which is not appurtenant in law, although, in fact, used or enjoyed with certain land, will not pass in a conveyance of the land by the words, "with all ways thereto belonging or in anywise appertaining." (*Barlow* v. *Rhodes*, 1 Cro. & Mee. 439; S. C. 3 Tyr. 280). But this decision should not, in all cases, be too confidently relied on. (Plowden, 178 a: *Hill* v. *Grainge*, Dyer, 130 b: *Archer* v. *Bennett*, Moore, 682: *Morris* v. *Edgington*, 3 Taunt. 24; and see the observations of Chief Justice Tindal, 5 Bing. N. C. 25, and *Bright* v. *Walker*, 1 C., M. & R. 211). A way by usage will, however, pass by the words, "together with all ways to the said premises belonging, or therewith or with any part thereof used and enjoyed." (*Kooystra* v. *Lucas*, 5 B. & Ald. 830; S. C. 1 Dow. & Ry. 506: see, too, *Harding* v. *Wilson*, 2 B. & C. 96; S. C. 3 Dow. & Ry. 387: see, too, *Hinchcliffe* v. *The Earl of Kinnoul*, 5 Bing. N. C. 1, 25). So an ancient way, which, though extinguished in law by unity of seisin, (see infra), continued to be used in fact, was held to pass

manner hereinafter mentioned, in, through, over, and along the lands and grounds of the said A. B., hereinafter men- WAY-LEAVE.

---

in the deed of partition by force of the words, "therewith usually held, used, occupied, or enjoyed." (*James* v. *Plant*, 4 Ad. & Ell. 749, reversing the decision in *Plant* v. *James*, 5 B. & Ad. 791, and 2 Nev. & Man. 517: see, too, *Clements* v. *Lambert*, 1 Taunt. 205). If one of two existing ways must pass on a conveyance, as a way of necessity, that which is most convenient will pass. (*Morris* v. *Edgington*, 3 Taunt. 24; see 5 B. & Ad. 794).

How a right of way may be extinguished.

A right of way may be extinguished by non-user, or by unity of possession. If a way has not been used for twenty years, a release of it will be presumed. (3 B. & C. 339; 12 Ves. 265). But this, it is apprehended, assumes that the person entitled to the way has been under no disability, and it may be questioned how far a reversioner would be bound by the non-user of a tenant for years, or for life, or of any owner of a partial estate. If the land to which a way appertains and that over which it passes come into the possession of the same person, this unity of possession operates as an extinction of the right of way, (*Heigate* v. *Williams*, Noy, 119: *Shury* v. *Piggott*, 3 Bulst. 340: *Dell* v. *Babthorpe*, Cro. Eliz. 300: *Blockley* v. *Slater*, 1 Lutw. 119: *Wright* v. *Rattray*, 1 East, 377: *Morris* v. *Edgington*, 3 Taunt. 24; 4 Ad. & Ell. 761), unless the way be one of necessity; (1 Wms. Saund. 328, n. (6): *Buckby* v. *Coles*, 5 Taunt. 311); and even then it is more correct, perhaps, to say that the way is extinguished, and that on a severance a new way of necessity, is created. Unity of possession only suspends the right of way where the party is seised in fee of one parcel of the land, and possessed of the other for a term. (4 Ad. & Ell. 761: *Thomas* v. *Thomas*, 2 C., M. & R. 34). The seisin of a releasee to uses does not constitute such a unity of possession as to effect an extinguishment, (4 Ad. & Ell. 766), and, of course, there will be no unity of possession if a lease be subsisting of one of the parcels. (*Hinchcliffe* v. *The Earl of Kinnoul*, 5 Bing. N. C. 1).

Where an Inclosure Act enacted that all ways over a certain field, which was allotted to A. B., should be extinguished, but provided that nothing should deprive C. D. of the right of ingress and egress to and from a certain water-course, for the purpose of opening certain hatches, it was held that C. D.'s right of way along the banks of the water-course (which was the shortest) was not extinguished by A. B.'s having made another path to the hatches. (*Adeane* v. *Mortlock*, 5 Bing. N. C. 236).

As to the revival of extinguished rights of way.

It has been considered that a right of way which has been extinguished by unity of possession, will ipso facto be revived on partition or severance. (1 Jenk. Cent. Ca. 37; Bro. Abr. *Extinguishment*, pl. 15; 4 Ad. & Ell. 763). But where a man, being seised of two closes,

WAY-LEAVE. tioned, and full and free liberty, power, and authority to and for the said C. D., E. F., and G. H., their executors,

---

from one of which there had been a right of way over the other, devised the closes with their respective appurtenances to different persons, it was decided that the way was not revived. (*Whalley* v. *Thompson*, 1 Bos. & Pul. 371). A former right of way, however, if actually in use, may be revived on a partition by a grant of the land with all ways "therewith used and enjoyed," or the like. (5 B. & Ad. 794: *James* v. *Plant*, 4 Ad. & Ell. 749). This, however, is not properly a revival, but a grant of a way particularly described as a way used with the land. (See supra as to the words by which an existing way will pass). So, it is said, that an extinguished right of way may be revived by user for a sufficient period; (*Keymer* v. *Summers*, Bull. N. P. 74); but it cannot be perceived that a right of way so acquired differs in any respect from a right of way entirely new. In truth, the whole law with regard to the revival of rights of way rests upon a very slight foundation.

Miscellaneous points relating to rights of way.

It remains to notice one or two other points relating to rights of way. Where a lessee of part of an estate covenanted to pay a rateable proportion with the other tenants of the estate, of the expense of keeping in repair the ways common to the tenants, and the only way to which the covenant could apply was a way which another tenant used over the land so leased, it was held that the lessee had notice of the existence of this way, and was bound to permit the use of it. (*Oakley* v. *Adamson*, 8 Bing. 356; S. C. 1 Moo. & Scott, 510).

If a person agree for a lease of way-leave, at a yearly rent, and if, afterwards, without any fault either of the proposed lessor or lessee, events happen which would render the proposed way-leave useless, a specific performance will not be decreed. (—— v. *White*, 3 Swanst. 108). Where the lessees of a colliery agreed to grant to the lessees of another colliery a license to use a way-leave enjoyed by the former, and the owner of the first colliery granted to the lessees of the second the same way-leave for a term of years, and afterwards, by assignment from the lessees of the first colliery, became possessed thereof, and of the way-leave, he was restrained, by injunction, from removing the materials of and destroying the way-leave. (*Newmarch* v. *Brandling*, 3 Swanst. 99). It is apprehended, however, that in ordinary cases a court of equity will not interfere by injunction to restrain the obstruction of a way; to obtain such an interference some imminent and irreparable injury must be shewn. (See *The Earl of Ripon* v. *Hobart*, 3 My. & Ke. 169).

As to whether the rails, blocks, &c., laid down to form a waggon-way belong to the landlord or tenant, see *Lowther* v. *Cavendish*, 1 Eden, 99, 118.

administrators, and assigns, and their agents, servants, and workmen, to enter upon and to make, lay, and place, and from time to time to amend and repair, a waggon-way, with a sideway or byeway, (so as not to exceed one main waggon-way and one byeway or sideway), in the usual manner, by digging the soil and levelling the ground, and making gutters in, through, over, and along certain lands and grounds of him the said A. B., situate, lying, and being in the township of ——, in the said county of ——, as the same are now stated and set out and particularly described in the plan thereof delineated in the margin of the first skin of these presents, for the leading, conveying, and carrying, with horses, carts, wains, waggons, and other carriages, over and along such waggon-way, and byeway or sideway, unto and towards the river ——, all and every the coals and cinders of them the said C. D., E. F., and G. H., their executors, administrators, or assigns, or any of them, to be wrought and gotten forth and out of the aforesaid colliery, and all the pits and shafts thereunto belonging, as well opened as not opened, and which they or any of them now have, or shall or may, at any time or times hereafter during the term hereby granted, have or be possessed of, within or under all or any of the lands and grounds situate, lying, and being in the township of —— aforesaid; and also for the leading, conveying, and carrying all and every the colliery utensils, iron, timber, stones, and other materials, matters, or things whatsoever, to and from any of the coal staiths of them the said C. D., E. F., and G. H., their executors, administrators, or assigns, on the said river ——, from and to the said colliery: AND ALSO, full and free liberty, power, and authority to and for them the said C. D., E. F., and G. H., their executors, administrators, and assigns, and their agents, servants, and workmen, from time to time and at all times during the said term hereby granted, as occasion shall require, to lead, place, lay, and fix wood, timber, earth, stones, gravel, rails, posts, sleepers, and other materials in and upon the lands and grounds hereinbefore mentioned of him the said A. B., and to use and employ workmen and horses, and to cut, dig, and make trenches, water-gates, and water-courses for the purpose of keeping the said waggon-

WAY-LEAVE.

—over lands in marginal plan;

—for carrying coals and materials to and from collieries;

—with power to do all necessary acts;

WAY-LEAVE.

way and sideway or byeway dry and free from water, and to do all other things necessary and convenient as well for the making, laying, and placing of the said waggon-way and sideway or byeway, as for the repairing and upholding the same, or any part thereof, when and as often as there shall be occasion: So ALWAYS, nevertheless, that the said waggon-way, with the byeway or sideway thereof, and the gutters included, shall not exceed fifteen yards in breadth in any part thereof (except in cutting through hills, or filling up drains, valleys, or hollow places, where it shall be necessary to make the same broader): AND ALSO, full and free liberty and authority to and for them the said C. D., E. F., and G. H., their executors, administrators, and assigns, and their agents, servants, and workmen, to go, pass, and repass along the said waggon-way and byeway or sideway, either on foot or with horses, waggons, carts, wains, or other carriages, loaden or unloaden, unto and from or towards the said hereinbefore-mentioned colliery: AND ALL and singular other liberties, privileges, authorities, conveniences, and appurtenances whatsoever, needful or necessary in or about the making, laying, placing, removing, altering, repairing, and using of the said waggon-way and byeway or sideway, or any of them: THEY THE SAID C. D., E. F., and G. H., their executors, administrators, or assigns, from time to time and at all times during the said term hereby granted, making reasonable compensation for all waste, damage, or spoil, which shall be occasioned by or in the exercise of the said liberties, powers, or authorities, to the lands belonging to the said A. B., his heirs or assigns, (EXCEPT and always reserved forth and out of this present demise, unto the said A. B., his heirs and assigns, full and free liberty, license, power, and authority, to and for him the said A. B., his heirs and assigns, to lay and make, or to give, grant, and demise unto any person or persons whomsoever, liberty, license, and power to lay and make one or more waggon-way or waggon-ways, byeway or byeways, branch or branches, way-leave or way-leaves, for any purposes whatsoever, across and intersecting any waggon-way or other way, made or laid by the said C. D., E. F., and G. H., their executors, administrators, and assigns, by virtue of these presents, and

—but so that the way do not exceed a certain width;

—with power to pass and repass;

—and all other needful powers;

—the lessees making compensation for damage.

Exception of right to make cross-ways;

WAY-LEAVE.

also to pass and repass in, through, upon, over, and along all and every such waggon-ways or other ways so to be made by or by the license of the said A. B., his heirs and assigns, as aforesaid, with horses, carts, wains, waggons, and all other carriages whatsoever, loaden or unloaden, but so as the said last-mentioned ways do not prejudice the waggon-way and byeway or sideway hereby granted, otherwise than by crossing or intersecting the same when necessary, and so as that the said A. B., his heirs or assigns, and his or their tenants, servants, and others do, in such crossing thereof, give as little hindrance and interruption or disturbance to the said C. D., E. F., and G. H., their executors, administrators, or assigns, and his and their workmen and servants, as may be, and do make, lay, and place one or more on-gate or on-gates, off-gate or off-gates, where they, or any of them, shall so cross the said waggon-way or other ways hereby granted: AND ALSO EXCEPT and always reserved forth and out of this present demise, full and free liberty and license to and for the said A. B., his heirs and assigns, and his and their servants and tenants for the time being of the said lands and grounds in the said township of ——, or any part thereof, and their or any of their servants, with horses, cattle, carts, wains, waggons, or any other carriages, ploughs, harrows, manure, hay, corn, lime, timber, and other things for the management, convenience, or husbandry of his or their lands, to pass over, across, or along the said waggon-way and byeway or sideway hereby granted, so as they, or any of them, shall not thereby obstruct, stop, or hinder the carriages, workmen, or servants of them the said C. D., E. F., and G. H., their executors, administrators, or assigns, in passing and repassing along the said waggon-way and byeway or sideway hereby granted: AND ALSO EXCEPT and always reserved forth and out of this present demise, unto the said A. B., his heirs and assigns, full and free liberty, power, and authority to stop, obstruct, and hinder all and every other person and persons from passing along or using the said way or ways hereby granted, either on foot or with horses or carriages, other than and except such persons, horses, and carriages as are hereby empowered to pass along and use

—and of right to use the way granted;

—and except the power to restrain all but the grantees from enjoying the way-leave.

WAY-LEAVE.

Habendum.

the same: To HAVE AND TO HOLD the said way-leave, waggon-way, byeway or sideway, liberties, privileges, and authorities, and all and singular other the premises hereby granted and demised, or expressed and intended so to be, unto the said C. D., E. F., and G. H., their executors, administrators, and assigns, from the —— day of —— now last past, for the term of thirty-one years from thenceforth next ensuing, and fully to be complete and ended:

Reddendum of a rent certain;

YIELDING AND PAYING therefore unto the said A. B., his heirs and assigns, yearly and every year during the continuance of the said term hereby granted, the certain yearly rent or sum of £250, for the yearly number of eight hundred tons of coals, to be won and wrought and led from and out of the said colliery of the said C. D., E. F., and G. H., called —— colliery, whether such quantity of eight hundred tons shall be yearly led and carried away over and along the said waggon-way or other ways hereby granted, or not, the said yearly rent of £250 to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be made on the —— day of —— now next ensuing:

—and of an extra tonnage rent;

AND ALSO YIELDING AND PAYING unto the said A. B., his heirs and assigns, over and above the said certain rent of £250, the further rent or sum of six shillings for every ton of coals (and so in proportion for a less quantity than a ton) which shall, during the said term hereby granted, be won and wrought out of the aforesaid —— colliery, and led over and along the said waggon or other ways hereby granted, over and above the said yearly quantity of eight hundred tons of coals, the said rent of six shillings for each ton to be paid upon the —— day of —— in every year, for all such quantities of coals (over and above the quantity aforesaid) as shall have been led over and along the said waggon-way or other ways hereby granted from the aforesaid colliery in the year then next preceding such day of payment:

—and of a compensation rent for damage to the surface;

AND ALSO YIELDING AND PAYING unto the said A. B., his heirs and assigns, over and above the said several rents hereinbefore reserved and made payable, double the rent or annual value of every acre (and so in proportion for a less quantity than an acre) of the said lands and grounds

of him the said A. B., his heirs or assigns, which they the said C. D., E. F., and G. H., their executors, administrators, or assigns, or their agents, servants, or workmen, shall damage or spoil by relaying or remaking the said waggon-way and byeway or sideway hereby permitted to be made, or by repairing the same or any of them, or by any other proceeding in pursuance of the powers hereby given, every such rent or sum so reserved as last hereinbefore mentioned, to commence and be paid on such —— day of —— or —— day of —— as shall first happen next after any such damage or spoil of ground shall have been done or occasioned, and to continue to be paid half-yearly as aforesaid during the remainder of the said term hereby granted, or until such lands and grounds so used, damaged, or spoiled as aforesaid, shall be properly levelled and made fit for the plough: AND ALSO YIELDING AND PAYING unto the said A. B., his heirs and assigns, over and above the said several rents hereinbefore reserved and made payable, the sum of £10 for every ton of coals (and so in proportion for a less quantity than a ton) which at any time during the said term shall be won, wrought, or gotten forth or out of any colliery other than the said —— colliery, and which they the said C. D., E. F., and G. H., their executors, administrators, or assigns, or their servants, agents, or workmen, shall, at any time or times during the said term hereby granted, convey, lead, or carry, or cause or permit to be conveyed, led, or carried, with horses, waggons, wains, carts, or otherwise, in, through, over, or along the said way or ways hereby permitted to be made, without the license of him the said A. B., his heirs or assigns, in writing, first had and obtained, the said rent or sum lastly hereinbefore reserved to be paid on such one of the said —— days of —— and —— days of —— as shall first happen after such leading, carrying, or conveying away coals as last aforesaid: AND ALSO YIELDING AND DELIVERING, yearly and every year during the said term of thirty-one years, over and above the said several rents hereinbefore reserved, unto the said A. B., his heirs or assigns, or to his or their order or demand, at such time or times as he or they shall think proper, at

WAY-LEAVE.

—and a penal rent for carrying any coals, except those gotten from grantee's colliery;

—and a stated rent in coals.

WAY-LEAVE.

the pit heap, staith, or spout of or belonging to the said —— colliery, —— tons of the best coals, the said several rents hereinbefore reserved to be paid or delivered free and clear of and from all existing and future taxes, charges, rates, assessments, impositions, payments, and outgoings whatsoever: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall not in any year lead and convey over and along the said waggon-way or other ways hereby granted, the quantity of eight hundred tons from the said —— colliery, that then, and so often as any such deficiency in the leading of the said quantity of coals shall happen, it shall be lawful for the said C. D., E. F., and G. H., their executors, administrators, or assigns, in any following year or years during the said term hereby granted, to lead and convey over and along the said waggon-way or waggon-ways such number of tons of coals (over and above the said yearly number of eight hundred tons of coals) as the respective number of tons led and conveyed along the said waggon-way or waggon-ways in the preceding year or years shall have been so deficient as aforesaid, without paying any rent or sum of money for the same beyond the aforesaid certain rent of £250 which shall be payable in such year: PROVIDED NEVERTHELESS, that the over leadings in any preceding year or years of the said term hereby granted shall not come in aid of or to supply the short leadings or deficiencies of any following year or years: PROVIDED ALWAYS, nevertheless, and these presents are upon this express condition, and it is hereby agreed and declared between and by the said parties to these presents, that if the said several yearly and other rents or sums of money and coals hereinbefore reserved, or any of them, or any part thereof respectively, shall be behind or unpaid or not delivered by the space of forty days next over or after any of the said days or times hereinbefore appointed for the payment or delivery thereof respectively, then and in every such case, and so often as the same shall happen, it shall be lawful for the said A. B.,

Proviso, that the deficiency in one year of the number of tons, for which a rent certain is paid, may be made up rent-free in a succeeding year;

—but that the overplus of a preceding year is not to make up the deficiency of a succeeding year.

Power of distress and obstructing the way-leave.

his heirs or assigns, not only to stop and hinder the leading and conveying of coals and other things over and along the said ways hereinbefore granted, and every of them, and for that purpose to set up posts or rails, and make or dig cuts or ditches, and put locks upon any of the gates or rails on the said premises, and pale up the said ways or any of them, and to continue such stopping or hindrance until the rents or coals which shall be in arrear and unpaid, or not delivered, shall be fully paid, delivered, and satisfied, together with the reasonable charges to be occasioned by such stopping or hindrance, but also to distrain all and every or any of the waggons, wains, carts, and carriages, and the coals or any other things found therein, and the horses and cattle drawing or not drawing the same, passing or repassing in, upon, through, over, or along the said waggon-ways or other ways hereby granted, and the rails, ropes, utensils, materials, and other things whatsoever, which shall be at or upon, or used or found in and about the said ways or any of them, or any part thereof respectively, and the distress and distresses then and there found, to take, lead, carry away, and detain, until all the said several and respective rents or sums of money, or coals, shall be fully paid, satisfied, and delivered, with the costs and charges attending such distress, taking, carrying away, and detaining as aforesaid; and by and out of the coals which may be so taken, to deduct and retain any coals which ought then to be delivered in pursuance of these presents, and on default of payment of any sums of money which ought then to be paid for the space of five days next after every such distress, to sell the same or any part thereof, and thereout to pay all sums of money then due and in arrear, and all costs and charges attending such distress and sale, rendering the overplus (if any) to the said C. D., E. F., and G. H., their executors, administrators, or assigns: PROVIDED ALSO, and it is hereby agreed and declared between and by the said parties to these presents, that if the said several rents and sums of money and coals hereinbefore reserved, or any of them, or any part thereof respectively, shall be behind or unpaid or undelivered by the space of forty days next over or after any of the said

WAY-LEAVE.

Proviso for re-entry.

WAY-LEAVE. days or times whereon the same ought to be paid or delivered as aforesaid, or if the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall not well and truly observe, perform, fulfil, and keep all and every the covenants, conditions, and agreements herein contained, and which on their parts ought to be observed, performed, fulfilled, and kept according to the true intent and meaning of these presents, then and in any of such cases it shall be lawful for the said A. B., his heirs or assigns, (without any demand being made for payment or delivery of the same rents or sums of money, or coals, or any of them), into and upon the said waggon and other ways, and other the premises hereby demised, or expressed and intended so to be, and which shall then be held, occupied, used, or enjoyed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, by virtue of these presents, or into or upon any part thereof, in the name of the whole to re-enter, and the same from thenceforth to have again, retain, and enjoy as in his and their former estate, and as if these presents had not been made; And the said C. D., E. F., and G. H., do hereby for themselves, their heirs, executors, administrators, and assigns, and each of them doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, that they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, from time to time and at all times during the said term hereby granted, pay and deliver, or cause to be paid and delivered, unto the said A. B., his heirs or assigns, the said several rents and sums of money hereinbefore reserved and made payable, and the said yearly quantity of —— tons of coals hereinbefore reserved, on or at the several days and times and in the manner hereinbefore mentioned and appointed for payment and delivery thereof respectively, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents: AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, from time to time and at all times during the said term hereby granted, pay and discharge all existing and future taxes,

Covenants by lessees for payment and delivery of rents;

—and payment of taxes;

charges, rates, assessments, impositions, and outgoings whatsoever, for or in respect of the said premises hereinbefore granted and demised, or any of them, or any part thereof respectively: AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, from time to time and at all times during the said term hereby granted, over and above the said yearly and other rents and sums of money hereinbefore reserved and made payable, make reasonable satisfaction unto the said A. B., his heirs or assigns, or his or their tenants and farmers, of his said lands and grounds at —— aforesaid, for all such spoil or damage of ground, hedges, fences, or trees, as shall be done or committed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, or their agents, servants, or workmen, in or upon the said lands and grounds, or any part thereof, by reason or means of their exercising or using any of the liberties, powers, or privileges hereby granted, (other than and except such spoil or damage of ground as shall be made or occasioned by reason or means of the said C. D., E. F., and G. H., their executors, administrators, or assigns, or their servants, agents, or workmen, relaying or remaking of the said ways and branches, or by repairing the same, or any part thereof, as hereinbefore is mentioned): AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, and assigns, shall and will, yearly and every year during the said term hereby granted, at their own expense and charge, set up, hang, fix, make, erect, and keep good and sufficient gates, with locks and keys, rails, bars, posts, or stoups, in, upon, and across the said waggon-way and other ways to be made, placed, erected, and built by them the said C. D., E. F., and G. H., their executors, administrators, or assigns, over and along the said lands and grounds of him the said A. B., at —— aforesaid, where the same shall be necessary and proper to shut up and inclose such breach or breaches, gateways or openings, as shall be made from time to time in the hedges or fences of the said lands and grounds: AND ALSO shall and will, from time to time and at all times during the said term

WAY-LEAVE.

—and to make satisfaction for damage done;

—and to put up sufficient gates to the breaches in the fences;

—and fence off the ways to be made;

WAY-LEAVE.

hereby granted, at the like expense and charges, sufficiently fence off with quickset hedges on both sides all and every the waggon-way, byeways, and other ways, which shall be made, laid, and placed by them in and upon the aforesaid lands and grounds, where the fencing off the same shall be necessary, proper, or convenient for the preventing the ingress or egress of cattle or otherwise: AND ALSO shall and will, from time to time and at all times during the said term hereby granted, at the like expense and charges, keep all the aforesaid gates, locks and keys, rails, bars, posts, stoups, and quickset hedges, in good and sufficient repair and condition: AND ALSO shall and will at all times, after the said waggon-way or other ways so to be placed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall be laid and formed as aforesaid, during the said term hereby granted, employ and keep proper gate-keepers to keep shut the said gates, and look after the said bars, rails, and fences to be placed across the said waggon-way and byeway or sideway, in order to prevent as much as possible the ingress or egress of cattle or trespassers on the lands or grounds of the said A. B., his heirs or assigns: AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall not nor will permit any person or persons whomsoever to lead coals, cinders, or other things from or to any other colliery than the said —— colliery, along the waggon-way or other ways to be by them made and placed as aforesaid: AND ALSO shall and will, at all times during the said term hereby granted, when and so often as there shall be occasion, at their own costs and charges, scour, dress, and cleanse the gutters and ditches to be made on each side of the said ways and branches respectively, so as to prevent the water which may be therein from running off the said ways or branches, or out of the said gutters and ditches, into and upon the said lands and grounds through which the same shall respectively be made: AND ALSO shall and will, at their own costs and charges, at all times during the said term hereby granted, amend and repair all such of the said waggon-ways and other ways, and the gutters and ditches thereof, as

—and to keep the gates and fences in repair;

—and keep gate-keepers;

—and to prevent persons from leading coals on the ways to be made from or to any other colliery;

—and to scour the gutters;

—and keep in repair such of the ways as the lessor may have occasion to use;

WAY-LEAVE.

the said A. B., his heirs or assigns, or his or their farmers, tenants, agents, or servants, shall have occasion to make use of in passing and repassing, by themselves, and with their horses, cattle, carts, and carriages, or otherwise, for the use and enjoyment of their lands, grounds, and premises, lying on each side of the said waggon-way and other ways, and also all such on-gates and off-gates as the said A. B., his heirs or assigns, or his or their tenants, shall hereafter make, lay, or place and use, where any waggon-way or waggon-ways to be laid or made by the said A. B., his heirs or assigns, or his or their tenants or grantees, shall cross the said waggon-way or other ways to be made or placed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, as aforesaid, or any of them: AND ALSO shall and will permit the said A. B., his heirs or assigns, or his or their tenant or tenants, to have, take, lead, and carry away for his and their own use and benefit, all the manure, dung, or compost to be bred and produced during the said term hereby granted, in or upon the said waggon-way and other ways hereby granted, or any of them, or any part thereof respectively: AND ALSO shall and will, at the end of every month during the said term hereby granted, at their own costs and charges, make and deliver unto the said A. B., his heirs or assigns, or his or their agent or agents, (if thereunto required by him or them), a true and perfect account in writing, under the hands of the viewer and overman and of the staithman employed by them the said C. D., E. F., and G. H., their executors, administrators, or assigns, in and about the aforesaid colliery, of all such quantities of coal as shall, during such month, have been carried away from the said colliery over and along the said waggon-way or other ways hereby granted: AND ALSO, that they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, at all times during the said term, make and keep all the waggons to be used on the said waggon-way and other ways of one measure and uniform size, and shall not nor will at any time alter, or cause or permit to be altered, the size of such waggons,

—and allow the lessor to use manure;

—and to deliver accounts of the coals carried;

—and to keep the waggons of uniform measure;

WAY-LEAVE.

without having first given three calendar months' notice in writing to the said A. B., his heirs or assigns, of their intention to make any such alteration: AND FURTHER, that it shall be lawful for the said A. B., his heirs and assigns, or his or their agents and servants, when and so often as he or they shall think fit, to measure and gauge, at the pit or pits or staith of the said —— colliery, or elsewhere, as he or they shall think fit, all or any of the waggons, wains, carts, or carriages to be used or employed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, in or about the leading and conveying of coals from the said —— colliery over and along all or any of the said waggon-ways and other ways hereby granted: AND IF, upon any such measurement or measurements of the said waggons, wains, carts, or carriages, the same, or any of them, shall be found to carry over-measure, then and in any such case it shall be lawful for the said A. B., his heirs and assigns, and his and their agents and servants, to stop the said waggons so carrying over-measure, until the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall reduce the same to the certain and uniform measure which such waggons ought to contain: AND THAT such waggons as shall be found, on any measurement, to carry over-measure, shall be deemed to have carried such over-measure for the space of six calendar months next preceding such measurement, unless some such measurement shall have been made within the space of six calendar months, and then only from the time of such last preceding measurement: AND FURTHER, THAT it shall be lawful for the said A. B., his heirs and assigns, and his or their agent or agents, from time to time and at all times during the said term hereby granted, to have free access and liberty to inspect, and at his or their own costs and charges to take copies of, the whole or any part of the overmen or staithman's books of presentment and leadings of coals to be gotten and led from the said colliery: AND ALSO, THAT it shall be lawful for the said A. B., his heirs and assigns, from time to time and at any time or times during the said term hereby granted, at his and their own costs and

—and that lessor may gauge waggons;

—and stop waggons carrying over-measure;

—and that such waggons shall be deemed to have carried over-measure for the times specified;

—and that lessor may inspect overmen and staithman's books;

—and keep inspecting clerks;

WAY-LEAVE.

charges, to appoint, keep, and employ any person or persons as a clerk or clerks at any of the pits or at the staith of the said colliery, to take an account in writing of all the quantities and numbers of tons, waggons, loads, or quantities of coals which shall from time to time be wrought and gotten out of the said colliery, and led along the said waggon-way or other ways hereby granted: AND FURTHER, THAT they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, within twelve calendar months next after the expiration or other sooner determination of the said term hereby granted, (unless the said A. B., his heirs or assigns, shall be desirous of purchasing the same pursuant to the proviso for that purpose hereinafter contained), at their own expense and charges take up, remove, lead, and carry away all and every the rails, sleepers, iron, wood, and other materials which shall be laid, fixed, or placed in or upon the said way or ways to be made and placed by them as aforesaid: AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, and assigns, shall and will with all convenient speed, and within the space of six calendar months next after every removal of such materials as shall have been by them laid, placed, or fixed as aforesaid, at the like expense and charge, well and sufficiently dig, fill up, throw down, and level, all and every the batteries, cuts, ditches, and trenches whatsoever, raised and made for the use of or occasioned by such waggon or other way or ways, or by reason or means of the liberties, authorities, and powers hereby granted, or any of them, so as to render the same fit for the plough, and, the same being so levelled, shall and will well and sufficiently plough the ground and the soil thereof, and sow the same with a proper and sufficient quantity of good hay or grass seeds, they giving reasonable notice in writing to the said A. B., his heirs or assigns, or his or their agent or agents, tenants or farmers of the said lands and grounds, previous to such ploughing and sowing, in order that he or they, or his or their tenants or farmers of the said lands, may (if he or they think proper) see the same fairly and regularly ploughed and sown down as aforesaid: AND ALSO, where any of the hedges in the said lands and grounds shall be cut through by

—and that lessees, at the end of the term, will remove ways;

—and make the land fit for ploughing, and plough and sow the same;

—and make good the fences;

WAY-LEAVE.

the said waggon-way or other ways hereby permitted to be made, then they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, with all convenient speed thereafter, make good and sufficient hedges in the room of those cut through as aforesaid: AND ALSO, THAT they the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall and will, at the expiration or other sooner determination of the said term hereby granted, yield and deliver up to the said A. B., his heirs or assigns, the peaceable and quiet possession of all and singular the said premises hereby granted and demised, subject and without prejudice to the performance of the covenants lastly hereinbefore contained: AND THE SAID A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., E. F., and G. H., their executors, administrators, and assigns, in manner following; (that is to say), that it shall be lawful for the said C. D., E. F., and G. H., their executors, administrators, and assigns, they paying and delivering the several rents hereinbefore reserved, and observing and performing the several covenants, conditions, and agreements herein contained on their parts to be observed and performed, peaceably and quietly to have, hold, use, occupy, possess, and enjoy all and every the liberties, privileges, powers, authorities, and premises hereby granted and demised, or expressed and intended so to be, in manner aforesaid, according to the true intent and meaning of these presents, at all times during the said term of thirty-one years hereby granted, without the lawful let, suit, hindrance, interruption, or disturbance of the said A. B., his heirs or assigns, or any person or persons lawfully claiming or to claim by, from, or under him, them, or any of them: AND FURTHER, THAT it shall be lawful for the said C. D., E. F., and G. H., their executors, administrators, or assigns, at any time or times during the space of twelve calendar months next after the end or other sooner determination of the said term hereby granted, to lead and carry away along all or any of the said waggon-way or other ways hereby granted, all such quantities of coals as before such end or other sooner determination of the said term shall have been wrought and laid

—and yield up quiet possession.

Covenants by lessor for quiet enjoyment;

—and that lessees may, after end of term, lead away coals then at bank;

WAY-LEAVE.

on bank at any of the pits of or belonging to the said colliery, the same being subject and liable to the same certain and tonnage rents as such coals would have been liable to pay had the same been actually led during the said term hereby granted: AND FURTHER, THAT it shall be lawful for the said C. D., E. F., and G. H., their executors, administrators, and assigns, at any time within the space of twelve calendar months next after the expiration or other sooner determination of the said term hereby granted, to take up, remove, lead, and carry away for their own use, all and every the rails, sleepers, iron, wood, and other materials which shall be laid, fixed, and placed by the said C. D., E. F., and G. H., their executors, administrators, or assigns, in or upon any of the lands or grounds of him the said A. B., under or by virtue of these presents, (unless the said A. B., his heirs or assigns, shall think fit to take and purchase the same as hereinafter mentioned), they the said C. D., E. F., and G. H., their executors, administrators, or assigns, having first paid and satisfied all and every the rents hereinbefore reserved, and having performed all and every the covenants, conditions, and agreements herein contained on their parts theretofore to be performed, and making and paying reasonable satisfaction for the damage and spoil of ground which shall be occasioned by having, using, and enjoying such liberties and privileges as aforesaid, during the said twelve calendar months next after the expiration or other sooner determination of the said term hereby granted: PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared between and by the said parties to these presents, that if the said A. B., his heirs or assigns, shall be desirous of purchasing the said waggon-ways, timber, iron, or other materials and things last mentioned, or any part thereof, and of such his or their desire shall give, or leave at the office of the said —— colliery, a notice in writing not less than three calendar months before the expiration or other sooner determination of the said term hereby granted, unto or for the said C. D., E. F., and G. H., their executors, administrators, or assigns, then and in such case they the said C. D., E. F., and G. H., their executors, adminis-

—and may, after the end of the term, remove rails and materials.

Lessor to have the option of purchasing rails and materials.

WAY-LEAVE.

trators, or assigns, shall and will leave all such waggon-ways, timber, iron, and other materials and things as shall so be desired to be purchased, fixed, standing, and remaining in their proper and respective places for the use of the said A. B., his heirs or assigns, he or they paying for the same to the said C. D., E. F., and G. H., their executors, administrators, or assigns, within the space of twelve calendar months next after the expiration or other sooner determination of the said term hereby granted, the reasonable value or price thereof; And he the said A. B., so far as relates to the acts and deeds of himself, his heirs and assigns, and his and their tenants, farmers, and grantees, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., E. F., and G. H., their executors, administrators, and assigns, and, so far as relates to the acts and deeds of them the said C. D., E. F., and G. H., and every of them, and of their and every of their executors, administrators, and assigns, they the said C. D., E. F., and G. H., do hereby for themselves, their heirs, executors, administrators, and assigns, and each of them doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, in manner following: (that is to say), That if any doubt, difference, or dispute shall a any time or times hereafter arise between the said A. B., his heirs or assigns, or his or their tenants, farmers, or grantees, and the said C. D., E. F., and G. H., or any of them, their or any of their executors, administrators, or assigns, touching the matters in respect of which a compensation (by way of rent or otherwise) ought to be made in pursuance of these presents, or touching the amount of such compensation, or the price to be paid in respect of any of the things which may be about to be purchased in pursuance of these presents, or touching the construction of these presents, or any other matter or thing whatsoever arising out of these presents, or having relation to the premises, then and in such case, &c. (*supra, p.* 160). IN WITNESS &c.

Arbitration clauses.

XIII.

LEASE *of* STOCKING FRAMES.

STOCKING FRAMES.

THIS INDENTURE, made &c. BETWEEN A. B., of &c. [*lessor*], of the one part; and C. D., of &c. [*lessee*], of the other part; WITNESSETH, that, in consideration of the rents hereinafter reserved, and of the covenants and agreements hereinafter contained, and on the part of the said C. D., his executors, administrators, and assigns, to be observed and performed: The said A. B. hath demised and leased, and by these presents doth demise and lease, unto the said C. D., his executors, administrators, and assigns, ALL THOSE two hundred and forty frames or machines used for the manufacturing of stockings and other articles of hosiery, now in the possession of the said A. B., and used by the several workmen now or heretofore employed by him in —— and —— and various other places, and a list or schedule of which is hereunder written, together with all and singular the tools, instruments, and other appurtenances to the said several frames or machines belonging or therewith used: TO HAVE AND TO HOLD the said several frames or machines, tools, instruments, and all and singular other the premises hereinbefore demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, from the 1st day of January now next ensuing, for the term of seven years thence next ensuing, and fully to be complete and ended: YIELDING AND PAYING therefore unto the said A. B., his executors, administrators, and assigns, yearly and every year during the said term, the sum of £—— for each of the said frames which is under the gauge of thirty gauges, and the sum of £—— for each of the said frames which is of the gauge of thirty gauges and upwards, or a three-needle frame, such rents to be paid clear from all deductions whatsoever by four equal quarterly payments, on the 1st day of January, the 1st day of April,

Parties.

Witnesseth.

Consideration.

Demise.

Parcels.

Habendum;

—for a term.

Reddendum of several rents, for the several frames, according to their size.

STOCKING FRAMES.

the 1st day of July, and the 1st day of October in every year, and the first of such payments to be made on the 1st day of April now next ensuing: AND THE SAID C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, that he the said C. D., his executors, administrators, or assigns, shall and will, at all times during the term hereby granted, pay or cause to be paid unto the said A. B., his executors, administrators, or assigns, the said several rents hereinbefore reserved, on the days and in manner hereinbefore mentioned and appointed for the payment thereof respectively (*a*): AND FURTHER, THAT he the said C. D., his executors, administrators, or assigns, shall and will, during the said term hereby granted, keep and use the said frames or machines, tools, instruments, and appurtenances, in a proper and workman-like manner, and with reasonable caution against every kind of damage, and against the same or any of them being lost or stolen: AND, at the end or other sooner determination of the said term of seven years, yield and deliver up unto the said A. B., his executors, administrators, or assigns, all and singular the said frames or machines, tools, instruments, and appurtenances hereinbefore demised, (save and except such of them as shall have been destroyed by fire (*b*) or other inevitable accident, or shall have been lost or stolen without any negligence

Covenants by lessee for the payment of rents;

—and for the proper use and safe custody of the frames;

—and to yield up the same at the end of the term;

(*a*) There is no provision in this draft as to the payment of rates and taxes, probably on the supposition that moveable machines are not liable to any rates or taxes. But as they might become so by subsequent enactments, perhaps the usual covenant for the payment of rates and taxes should be inserted.

(*b*) The provisions with respect to the loss or destruction of the machines are not very satisfactory; it would, perhaps, be better that the lessee should covenant to keep them in repair, and that, without the exception of the loss by fire or any other exception, for he has the control of them; and whatever risk or wear and tear they are exposed to, must be through his acts or default. If the machines are to be kept together, as in a manufactory, provision should be made for insuring them against fire; but, of course, that object cannot be conveniently accomplished, if they are to be dispersed separately in the houses of the workmen.

STOCKING FRAMES.

or default of the said C. D., his executors, administrators, or assigns), in good and working condition, he the said A. B., his executors, administrators, and assigns, performing the covenant on his and their part hereinafter contained for the due repair of the same: AND ALSO, THAT if the said several yearly rents hereinbefore reserved, or any of them, or any part or parts thereof respectively, shall be behind and unpaid by the space of twenty-one days next over or after any of the days whereon the same ought to be paid as aforesaid, (and whether the same shall have been demanded or not), then and in every such case it shall be lawful for the said A. B., his executors, administrators, or assigns, to seize, and resume and take into his own possession and power all and singular the said frames, machines, tools, instruments, and premises hereinbefore demised, and thenceforth to retain and enjoy the same as his and their own chattels and effects (*c*): AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his executors, administrators, or assigns, shall and will, on or before the —— day of —— now next ensuing, [*the commencement of the term*], give unto the said C. D., his executors, administrators, or assigns, the full and peaceable possession of the said several frames or machines, tools, instruments, and premises hereinbefore demised, or expressed and intended so to be, in a good and perfect state of working repair and condition in all respects: AND ALSO, THAT he the said A. B., his executors, administrators, or assigns, shall and will, from time to time and at all times during the continuance of the said term of seven years, maintain and keep the said several frames or machines, tools, instruments, and premises hereinbefore demised, in good and complete working order and condition, by and with all necessary repairs and amendments whatsoever: AND FURTHER, THAT he the said C. D., his executors, administrators, or assigns, duly paying the said

—and that if the rents be unpaid, the lessor may seize and resume the frames.

Covenants by the lessor to give the lessee possession of the frames in good condition;

—and to keep them in repair during the term;

—and for quiet enjoyment.

(*c*) There can be no power of distress or re-entry in leases of this nature, but, by analogy to other leases, a power like that in the text should be given to the lessor.

STOCKING FRAMES.

several rents hereinbefore reserved, shall and lawfully may peaceably and quietly have, hold, occupy, possess, and enjoy the said several frames or machines, tools, instruments, and premises hereinbefore demised, during the said term of seven years, without any interruption or disturbance whatsoever from or by the said A. B., his executors, administrators, or assigns, or any person or persons whomsoever claiming from, under, or in trust for him or them, or any of them: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that, in case the said frames or machines, tools, instruments, and premises hereinbefore demised, or expressed and intended so to be, or any of them, shall become unfit for work for want of any such necessary repairs and amendments as aforesaid, and in case the said C. D., his executors, administrators, or assigns, or his or their agent, shall give notice thereof to the said A. B., his executors, administrators, or assigns, and he or they shall refuse, neglect, or omit forthwith to put the same or any of them into good and complete working order and condition as aforesaid, it shall be lawful for the said C. D., his executors, administrators, or assigns, (if he or they shall think fit), to put the same or any of them into such good and complete working order and condition as aforesaid, and to deduct and retain the costs and charges which he or they shall or may thereby incur or be put to, from and out of the rents which shall then be or shall thereafter become due and payable to the said A. B., his executors, administrators, or assigns, according to the reservation hereinbefore contained: PROVIDED ALSO, and it is hereby agreed and declared between and by the said parties to these presents, that, if the said frames or machines, or any of them, or any of the tools, instruments, or appurtenances used therewith respectively, shall be destroyed by fire or other inevitable accident, or shall be lost or stolen, without any neglect or default of the said C. D., his executors, administrators, or assigns, or if the same shall not (after such notice as aforesaid) be put in good and complete repair and working condition by the said A. B., his executors, administrators, or assigns, or by the said C. D., his executors, administrators, or assigns,

If lessor, on notice, do not repair, lessee may repair and retain the costs out of the rent.

Rents in certain events to cease;

STOCKING FRAMES.

in pursuance of the proviso lastly hereinbefore contained, then and in any such case the rents hereinbefore reserved and made payable in respect of the said frames or machines which, or the tools, instruments, or appurtenances used with which, shall be so destroyed, lost, stolen, or not repaired as aforesaid, shall cease to be payable from the quarter-day next preceding: PROVIDED NEVERTHELESS, that if any of such frames or machines as last aforesaid shall afterwards be recovered or duly repaired, then the rents hereinbefore reserved in respect of such machines shall again become payable, the first payment of such renewed rents, or a proportionate part thereof, to be made on such one of the quarterly days of payment as shall happen next after the same shall be so recovered or repaired as aforesaid: PROVIDED ALSO, and it is hereby further agreed and declared between and by the said parties to these presents, that, in case the said C. D. shall die before the expiration of the said term of seven years, and in case the executors or administrators of the said C. D. shall be desirous to determine and put an end to the said term, and shall give three calendar months' notice in writing under their hands of such their desire to the said A. B., his executors, administrators, or assigns, then, from and immediately after the expiration of the said notice and full payment of all rents which shall then have become payable, the said term shall cease, determine, and be utterly void: PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that, in case the said C. D., his executors, administrators, or assigns, shall, at the expiration of the said term hereby granted, be desirous of purchasing the said frames or machines, tools, instruments, and premises, or such of them as shall then be in existence, he the said A. B., his executors, administrators, or assigns, shall and will sell the same to the said C. D., his executors, administrators, or assigns, at a fair and reasonable price, to be determined as hereinafter is mentioned: PROVIDED ALSO, and it is hereby lastly agreed and declared between and by the said parties to these presents, that if the said C. D., his executors, administrators, or assigns, shall be desirous of purchasing the said frames or machines and premises, by

—and again to become payable on other events.

If lessee die during the term, his executors or administrators may determine it.

Lessee to have the option of purchasing the frames at the end of the term.

Arbitration clauses.

STOCKING FRAMES.

virtue of the proviso lastly hereinbefore contained, then and in such case the same shall be valued within —— before the expiration of the said term by two indifferent persons, one to be chosen by the said A. B., his executors, administrators, or assigns, the other by the said C. D., his executors, administrators, or assigns, or if the said two persons chosen shall disagree, then by an umpire to be chosen by such two persons before entering on their valuation, and if any doubt, dispute, or difference shall arise concerning the repair or condition of the said machines, or the due observance of the covenants relating thereto, the same shall be decided by two indifferent persons or their umpire, to be respectively chosen as hereinbefore is directed with regard to the valuation aforesaid; and if, in case of any such valuation or decision being required, either of them the said A. B. and C. D., or their respective executors, administrators, or assigns, shall neglect or refuse to appoint a person in pursuance of the provisions aforesaid, or the person appointed by one of them shall neglect or refuse to act, then, and in either of such cases, the person appointed by the other of them, his executors, administrators, or assigns, shall alone make such valuation or decision as aforesaid, and such valuation or decision as aforesaid shall in all cases be binding and conclusive (*d*). IN WITNESS &c.

(*d*) See some longer and more perfect arbitration clauses, supra, p. 160.

PARTITIONS.

General observations.

THE law with respect to Partitions by Conveyance will be found ante, Vol. 1, Art. PARTITION. It will be only necessary to observe in this place, that the present practice of Conveyancers, in all cases of Partition of Freeholds, is to vest the whole estate in a releasee to uses by a general conveyance by lease and release from all persons interested; or, if any of the shares are settled with powers of Partition, then to appoint those shares to uses. The uses are then separately declared, of the lands taken in severalty by each party—so that, in fact, each party takes his lands as a purchaser. Copyholds are similarly dealt with, by means of a covenant by all parties to surrender, and a surrender accordingly of the different tenements to the different parties in severalty; if any share has been settled, with a power of partition, there must be an exercise of the power. It is a question, whether the lord's license is necessary for the Partition of Copyholds; but this, of course, does not arise when the partition is made, as it always should be made, by surrender. The next Precedent furnishes a very complete example of the method of making a Partition, both of Freeholds and Copyholds, where some of the shares have, and some have not, been settled. See, too, the Precedents XV. and XVI., and as to Partitions of Leaseholds, see infra, Precedent XVII. and note (*a*) thereto.

XIV.

FREEHOLDS AND COPYHOLDS.

PARTITION *by four Co-heirs of* FREEHOLDS *and* COPYHOLDS—TWO *of the* SHARES *having been* SETTLED *on* MARRIAGE, *the* PARTITION *as to them is made under* POWERS *in the* SETTLEMENTS. APPORTIONMENT *in equal Shares of a* RENT CHARGE *Charged on all the Lands Partitioned, with cross* POWERS *of* DISTRESS.

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c. [*eldest co-heir*], of the first part; C. D., of &c., and E. F., of &c. [*trustees of settlement of second co-heir*], of the second part; G. H., of &c., and J. H. his wife, (formerly J. B., spinster), [*second co-heir*], of the third part; H. B., of &c., spinster, [*third co-heir*], of the fourth part; L. M., of &c., and N. P., of &c., [*trustees of settlement of fourth co-heir*], of the fifth part; the said C. D. and Q. D. his wife, (formerly Q. B., spinster), [*fourth co-heir*], of the sixth part; and R. S., [*releasee*], of the seventh part:

Recital of seisin and death of ancestor, intestate, and leaving four co-heirs;

WHEREAS J. B., late of &c., being at the time of his death seised or entitled of or to several freehold messuages, lands, tenements, and other hereditaments, for an estate of inheritance in fee-simple, and being legally or equitably seised or entitled of or to several copyhold or customary messuages, lands, tenements, and other hereditaments, for an estate of inheritance to him and his heirs, according to the customs of the several manors of which the same were respectively holden, died on the —— day of ——, intestate, leaving the said A. B., J. H., (then J. B., spinster), H. B., and Q. D., (then Q. B., spinster), his only children and co-heirs at law, and also his co-heirs, according to the custom of the several manors, of which the said copyhold or customary hereditaments were respectively holden: [*Recital of the settlement on the marriage of J. H. of her*

—of the settlements of the shares of two

FREEHOLDS AND COPYHOLDS.

fourth share, C. D. and E. F. being the trustees, having the whole legal estate, and being donees of the power of partition which is recited at full length—similar recital of the settlement on the marriage of Q. D. of her fourth share, L. M. and N. P. being the trustees, having the whole legal estate, and being donees of the power of partition, which is also recited at full length—recitals of agreement for an act of Parliament, and an act of Parliament whereby some of the lands descended upon the co-heirs were given in exchange, and others taken in lieu thereof (*a*)]: AND WHEREAS the said A. B., and the said C. D. and E. F., as such trustees as aforesaid, at the request and by the direction of the said G. H. and J. H., testified by this writing under their hands and seals (*b*), and the said H. B., and the said L. M. and N. P., as such trustees as aforesaid, at the request and by the direction of the said C. D. and Q. D., testified by this writing under their hands and seals, have agreed respectively to make a partition and division in manner hereinafter mentioned, of all the said lands and hereditaments which descended to the said A. B., J. H., H. B., and Q. D., either as co-heirs at law or as co-heirs, by the custom of the said J. B. their late father, as hereinbefore is mentioned, (except the said hereditaments comprised in the said second schedule to the said act of Parliament, and thereby given in exchange as therein mentioned), and also of all the lands and hereditaments which were comprised in the said first schedule to the said act of Parliament, and thereby taken in exchange for the heredita-

—of the co-heirs and of an exchange;

—of the agreement for the partition;

(*a*) As to the manner in which the clauses and limitations of settlements are to be recited, see ante, Vol. 3, p. 222, n. (*c*); the recital of the agreement for the act of Parliament, and of the act, would probably in this case require to be pretty full, and, of course, the parcels given and taken in exchange would have to be specified by full description, or by the annexation to the partition deed of copies of the schedules to the act. The recitals of the powers of partition should shew the powers of the trustees to give receipts for money paid for equality of exchange.

Recital of settlements, &c., in partition deeds.

(*b*) As to the form in which a request should be testified, see ante, Vol. 3, p. 434, n. (*a*).

FREEHOLDS AND COPYHOLDS.

ments comprised in the second schedule thereto, as hereinbefore is mentioned: AND WHEREAS the particulars of all the said hereditaments so agreed to be parted as aforesaid, are comprised in the four schedules (*c*) to these presents, and, on the treaty for the said partition, it was agreed, that such of the said hereditaments so agreed to be parted, as are mentioned and comprised in the first schedule to these presents, should be taken in severalty by the said A. B., and that such of the hereditaments so agreed to be parted, as are mentioned and comprised in the second schedule to these presents, should be taken in severalty by the said C. D. and E. F., as such trustees as aforesaid, and that such of the hereditaments so agreed to be parted, as are mentioned and comprised in the third schedule to these presents, should be taken in severalty by the said H. B., and that such of the said hereditaments so agreed to be parted, as are mentioned and comprised in the fourth schedule to these presents, should be taken in severalty by the said L. M. and N. P., as such trustees as aforesaid: AND WHEREAS, on the said treaty it was also agreed, that the person or persons taking the hereditaments comprised in the said first schedule hereto, should pay the sum of £237 for equality of partition, and that the said sum of £237 should be distributed and paid in respect of the hereditaments comprised in the said second, third, and fourth schedules hereto, in the parts and in manner hereinafter mentioned, (that is to say), the sum of £57 part thereof, to be paid for equality of partition, in respect of

—and of the particulars of the partition;

—of a sum to be paid for equality of partition.

Parcels in partition deeds.

(*c*) This is the usual method of dealing with the parcels in partitions, inasmuch as it is by far the most convenient way, especially if the partitioners are numerous. Of course, however, the several parcels taken in severalty may be described in the body of the deed, and distinguished as those "of which the uses are firstly, secondly, &c., hereinafter described." A partition is generally preceded by a survey, for the purpose of adjusting the portions to be taken in severalty, and this survey furnishes the scheduled description. The old description (that in the instrument by which the tenancy in common was created, if it were created by an assurance) is usually given in the general conveyance of the entire estate to the releasee, which serves to connect the old with the modern description in the schedules.

FREEHOLDS AND COPYHOLDS.

the said hereditaments comprised in the said second schedule hereto, the sum of £27 further part thereof, to be paid for equality of partition in respect of the said hereditaments comprised in the said third schedule hereto, and the sum of £153, residue thereof, to be paid for equality of partition in respect of the said hereditaments comprised in the said fourth schedule hereto: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreements, and in consideration of the said sum of £57 to the said C. D. and E. F., as such trustees as aforesaid, paid by the said A. B., at or immediately before the sealing and delivery of these presents, (the receipt and payment of which sum of £57, they the said C. D. and E. F., and also the said G. H. and J. H., do hereby acknowledge, and of and from the same and every part thereof, do, and each of them doth, acquit, release, and discharge the said A. B., her heirs, executors, administrators, and assigns, for ever by these presents), and pursuant to, and by force and virtue, and in exercise and execution of the power or authority, powers or authorities, to them for this purpose respectively given in and by the said indenture of the —— day of ——, [*the first settlement*], and the said act of Parliament by reference thereto, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling them in this behalf, they the said C. D. and E. F., at the request and by the direction of the said G. H. and J. H., (testified by this writing, signed and sealed by them respectively), do by this deed or instrument in writing, sealed and delivered by them the said C. D. and E. F., in the presence of and attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses to the sealing and delivery of these presents (*d*) by the said C. D. and E. F., absolutely revoke, determine, and make void all and every the uses, trusts, powers, and provisoes, which, under or by virtue of the said indenture of the —— day of ——, [*the first settlement*], were imme-

Witnesseth. Consideration.

Receipt.

Revocation of the uses by the first settlement declared of one-fourth share.

(*d*) See ante, Vol. 3, p. 200, n. (*d*); p. 211, n. (*e*). The case of *Doe* v. *Burdett*, there cited, has been since reversed. (1 Per. & Dav. 670).

FREEHOLDS AND COPYHOLDS.

diately before the execution of these presents subsisting, or capable of effect, of or in the said undivided fourth part or share comprised in the said indenture of the —— day of ——, [*the first settlement*], of and in all the said freehold and copyhold hereditaments and premises, an undivided fourth part or share whereof was thereby released, and covenanted to be surrendered respectively as aforesaid, (except the said undivided fourth part or share comprised in the said second schedule to the said act of Parliament), and also all the uses, trusts, powers, and provisoes, which, under or by virtue of the said indenture of the —— day of ——, [*the first settlement*], and the said act of Parliament by reference thereto, were immediately before the sealing and delivery of these presents subsisting, or capable of taking effect, of or in the said undivided fourth part or share, by the said act of Parliament limited to the said C. D. and E. F. as such trustees as aforesaid, of and in the said hereditaments comprised in the said first schedule to the same act: AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the aforesaid agreement, and for the considerations aforesaid, and pursuant to &c., they the said C. D. and E. F., at the request &c., do by this deed &c., limit, declare, direct, and appoint (*e*), that the said undivided fourth part or share, comprised in the said indenture of the —— day of ——, [*the first settlement*], of and in all the said freehold and copyhold hereditaments and premises, an undivided fourth part or share whereof was thereby released, and covenanted to be surrendered respectively as aforesaid, (except the said hereditaments comprised in the said second schedule to the said act of Parliament), and of and in their appurtenances, and also the said undivided fourth part or share, by the said act of Parliament limited to the said C. D. and E. F. as such trustees as aforesaid, of and in the hereditaments comprised in the said first schedule to the same act of

Witnesseth further, appointment that the same share shall go to the uses afterwards declared.

(*e*) If the power of revocation, and the power of appointment, are both to be exercised with the same formalities, there is no occasion for two distinct witnessing parts to effectuate the revocation and appointment. (See ante, Vol. 3, p. 230, n. (*j*)).

FREEHOLDS AND COPYHOLDS.

Parliament, and of and in their appurtenances, shall henceforth go, remain, and be to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and contained or referred to, of or concerning the same: AND THIS INDENTURE ALSO WITNESSETH, &c., [*similar revocation (substituting £153 for £57 as the consideration) of the uses of the second settlement by L. M. and N. P., with the consent of the said C. D. and Q. D., following the forms prescribed by that settlement*]: AND THIS INDENTURE ALSO WITNESSETH, &c., [*appointment by L. M. and N. P., with the consent of C. D. and E. D., of the fourth share comprised in the second settlement, following the forms prescribed by that settlement*]: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreements, and in consideration of the premises, and in consideration of the sum of £27 to the said H. B. paid by the said A. B., at &c., [*ante*, Vol. 3, p. 194], the receipt &c., (*Ib.*), she the said A. B., so far as relates to her undivided fourth part or share of and in the said hereditaments hereinafter released, or expressed or intended so to be, hath granted, released, and confirmed, and by these presents doth grant, release, and confirm; and the said C. D. and E. F. as such trustees as aforesaid, at the request and by the direction of the said G. H. and J. H. his wife, testified as hereinbefore is mentioned, and so far as relates to the undivided fourth part or share which became vested in them the said C. D. and E. F., as such trustees as aforesaid, of and in the said hereditaments hereinafter released, or expressed and intended so to be, have, and each of them hath, released, and by these presents do, and each of them doth, release, and the said G. H. and J. H., so far as relates to the said last-mentioned undivided fourth part or share of and in the same hereditaments, have, and each of them hath, granted, released, and confirmed, and by these presents do, and each of them doth, grant, release, and confirm (*f*); and the said H. B., so far as relates to her undivided fourth part or share, of and in the

Similar revocation and appointment as to the other settled share.

Witnesseth further, general conveyance by all parties, by lease and release of the freeholds.

(*f*) See infra, n. (*q*).

FREEHOLDS AND COPYHOLDS.

said hereditaments hereinafter released, or expressed and intended so to be, hath granted, released, and confirmed, and by these presents doth grant, release, and confirm; and the said L. M. and N. P., as such trustees as aforesaid, at the request and by the direction of the said C. D. and E. F., testified as hereinbefore is mentioned, and so far as relates to the undivided fourth part or share which became vested in them the said L. M. and N. P., as such trustees as aforesaid, of and in the said hereditaments hereinafter released, or expressed and intended so to be, have, and each of them hath, released, and by these presents do, and each of them doth, release; and the said C. D. and Q. D., as to the said last-mentioned undivided fourth part or share of and in the same hereditaments, have, and each of them hath, granted, released, and confirmed, and by these presents do, and each of them doth, grant, release, and confirm (*g*), unto the said R. S. (in his actual possession, &c.) [*lease for a year made by all parties, ante, Vol. 3, pp.* 198, 240] and his heirs; ALL THAT &c., (being the freehold hereditaments, the particulars whereof are comprised in the said first schedule to these presents); AND ALSO, ALL THAT &c., (being the freehold hereditaments, the particulars whereof are comprised in the said second schedule to these presents), [*similar descriptions and references as to the hereditaments in the third and fourth schedules—general words*]: TO HAVE AND TO HOLD the said messuages or tenements, lands and hereditaments, and all and singular other the premises hereinbefore released, or expressed and intended so to be, (subject nevertheless, and charged as to such of the hereditaments hereinbefore released, or expressed and intended so to be, as were comprised in the said first schedule to the said act of Parliament, with the said annual sum or yearly rent charge of £——, and the powers and remedies for enforcing payment thereof when in arrear), unto the said R. S., his heirs and assigns, TO THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and contained, or referred to, of and concerning the same: AND IT IS

Parcels.

Habendum.

To uses.

Declaration of uses.

(*g*) See infra, n. (*q*).

FREEHOLDS AND COPYHOLDS.

HEREBY agreed and declared between and by the parties to these presents, that the directions, limitations, and appointments, and also the grants, releases, and confirmations hereinbefore contained, shall operate and enure as to the said hereditaments hereinbefore released, or expressed and intended so to be, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and contained, or referred to, of and concerning the same; that is to say, AS TO, FOR, AND CONCERNING all such and so many, and such part and parts of the hereditaments hereinbefore released, or expressed and intended so to be, as are mentioned and comprised in the said first schedule to these presents, with their appurtenances (*h*), to the use of the said A. B., her heirs and assigns; AND AS TO, FOR, AND CONCERNING all such and so

---

As to the effect of a partition on easements enjoyed by the owners of one estate over the other.

(*h*) In a case in which estates A. and B., formerly distinct, became vested in coparceners, and, after this unity of seisin, a right of way, which had been enjoyed by the owners and occupiers of A., over B., continued to be used by the occupier of A., and by a deed of partition, the coparceners conveyed both estates, "with all *ways*, easements, &c., to the said messuages, lands, &c., *belonging or appertaining, or therewith usually held, occupied, or enjoyed*;" to hold the messuage and estate A., *with the appurtenances*, to the releasee, to the use of one coparcener in fee; and to hold the messuage and estate B., with the appurtenances, unto and to the use of the releasee in fee, in order that he might become tenant to the præcipe to suffer a recovery: it was held by the Court of Exchequer Chamber, (reversing a judgment of the Court of King's Bench), that there was sufficient indication of intention that the way should pass to the releasee with estate A., as being a way "therewith usually held, occupied, or enjoyed;" and that the word "appurtenances," in the habendum of that estate, was so explained by the previous general words as to include the way; and that, as the releasee took B. in fee, and no estate in A., he never had such a seisin as would extinguish the way by unity of seisin. (*James* v. *Plant*, 4 Ad. & Ell. 749; see, too, supra, Precedent XII., n. (*a*), p. 184). This case seems to suggest the propriety of repeating the general words after each declaration of uses, so that there may be no doubt as to the intention to pass all ways appurtenant, or used, or enjoyed over the other lands parted. And it seems that even if the ancient way were not revived, such a declaration would create a new way, by reference to the fact of present user. (Bro. Abr. Tit. *Extinguishment*, 15; see, too, 1 Jenk. Cent. Ca. 37, cited 4 Ad. & Ell. 763; supra, p. 185, n.).

FREEHOLDS AND COPYHOLDS.

many, and such part and parts of the hereditaments hereinbefore released, or expressed and intended so to be, as are mentioned and comprised in the said second schedule to these presents, with their appurtenances, to the use of the said C. D. and E. F., their heirs and assigns, upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, agreements, and declarations expressed, declared, and contained, in and by the said indenture of the —— day of ——, [*the first settlement*], as, immediately before the sealing and delivery of these presents, were subsisting or capable of taking effect, other than and except the power of partition in the same indenture contained, and intended to be hereby exercised as aforesaid: [*Similar limitations as to the hereditaments in the third schedule to H. B. in fee—and as to those in the fourth schedule to L. M. and N. P. in fee, upon the trusts of the second settlement*]: AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that the directions, limitations, and appointments hereinbefore respectively made as aforesaid, as to the two undivided fourth parts or shares respectively comprised in the said indentures of the —— day of —— and the —— day of ——, [*the two settlements*], of and in the copyhold or customary hereditaments, respectively comprised in the said four schedules to these presents, and of and in their appurtenances (*i*), shall operate and enure to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained, or referred to (that is to say), AS TO, FOR, AND CONCERNING the said two undivided fourth parts or shares, respectively comprised in the said indentures of the —— day of —— and the —— day of ——, [*the two settlements*], of and in the said copyhold or customary hereditaments comprised in the said first schedule to these presents, and of and in their appurtenances, to the use of the said A. B., her heirs and assigns for ever; AND AS TO, FOR, AND CONCERNING the said two undivided fourth parts or shares respectively comprised in the said inden-

Declaration of uses as to the settled shares of the copyholds.

(*i*) See supra, n. (*h*), and infra, n. (*k*).

FREEHOLDS AND COPYHOLDS.

tures of the —— day of —— and the —— day of ——, [*the two settlements*], of and in the said copyhold or customary hereditaments comprised in the said second schedule to these presents, and of and in their appurtenances, to the use of the said C. D. and E. F., their heirs and assigns, upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, agreements, and declarations, expressed, declared, and contained in and by the said indenture of the —— day of ——, [*the first settlement*], as, immediately before the sealing and delivery of these presents, were subsisting or capable of taking effect, except the said power of partition in the same indenture contained, and intended to be hereby exercised as aforesaid: [*Similar limitations as to the copyhold hereditaments in the third schedule to H. B. in fee—and as to those in the fourth schedule, to L. M. and N. P. in fee, upon the trusts of the second settlement*]: AND IN FURTHER PURSUANCE of the said agreements, and in consideration of the premises, she the said A. B., so far as relates to her undivided fourth part or share of and in the said copyhold or customary hereditaments hereby covenanted to be surrendered, doth hereby for herself, her heirs, executors, and administrators; and the said G. H., so far as relates to the undivided fourth part or share, by the said indenture of the —— day of —— [*the first settlement*] covenanted to be surrendered as aforesaid, of and in the said copyhold or customary hereditaments hereby covenanted to be surrendered, doth hereby for himself, his heirs, executors, and administrators; and the said H. B., so far as relates to her undivided fourth part or share of and in the said copyhold or customary hereditaments hereby covenanted to be surrendered, doth hereby for herself, her heirs, executors, and administrators; and the said C. D., so far as relates to the undivided fourth part or share, by the said indenture of the —— day of —— [*the second settlement*] covenanted to be surrendered, doth hereby for himself, his heirs, executors, and administrators, covenant with the said R. S., his executors and administrators, THAT, at or before the next courts to be holden in or for the respective manors, of which the said copyhold or cus-

Covenant to surrender the copyholds.

FREEHOLDS AND COPYHOLDS.

tomary hereditaments hereby covenanted to be surrendered are respectively holden, all necessary and proper parties SHALL AND WILL, at the costs and charges of the said A. B., her heirs and assigns, surrender into the hands of the lord or lords, lady or ladies of the manor or respective manors of which the same are respectively holden, ALL THAT &c., [*parcels*], being the copyhold hereditaments, the particulars whereof are comprised in the said first schedule to these presents, [*general words*] (*k*), to the use of the said A. B., her heirs and assigns for ever, to be holden at the will of the lord or lords, lady or ladies, according to the custom of the manor or respective manors of which the same premises are respectively holden, at, under, and subject to the rents, suits, and services therefore due and of right accustomed: AND SHALL AND WILL, at the costs and charges of the person or persons for the time being entitled, under the trusts of the said indenture of the —— day of ——, [*the first settlement*], surrender into the hands of the lord or lords, lady or ladies of the manor or respective manors of which the same are respectively holden, ALL THAT &c., [*parcels*], being the copyhold hereditaments, the particulars whereof are comprised in the said second schedule to these presents, [*general words*], to the use of the said C. D. and E. F., their heirs and assigns, to be holden at the will of the lord or lords, lady or ladies, according to the custom of the manor or respective manors of which the same premises are respectively holden, at, under, and subject to the rents, suits, and services, therefore due and of right accustomed, and upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, agreements, and declarations, expressed, declared, and contained in and by the said indenture of the —— day of ——, [*the first settlement*], as, immediately before the sealing and delivery of these presents, were subsisting or capable of taking effect, except the said power of partition in the same

(*k*) General words ought certainly to be introduced after each set of copyhold parcels, as there is no common set of general words for the copyholds. (See supra, p. 217, n. (*h*).

indenture contained, and intended to be hereby exercised as aforesaid: [*Similar covenants to surrender the copyholds in the third schedule to the use of H. B. in fee—and those in the fourth schedule to the use of L. M. and N. P. in fee, upon the trusts of the second settlement*]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the said hereditaments, the particulars whereof are comprised in the said first schedule to these presents, shall be charged and chargeable with one equal fourth part of the said annual sum or yearly rent-charge of £——, in exoneration of the said hereditaments comprised in the said second, third, and fourth schedules to these presents, and the said hereditaments, the particulars whereof are comprised in the said second schedule to these presents, shall be charged and chargeable with one equal fourth part of the said annual sum or yearly rent-charge of £——, in exoneration of the said hereditaments, the particulars whereof are comprised in the said first, third, and fourth schedules to these presents, and the said hereditaments, the particulars whereof are comprised in the said third schedule to these presents, shall be charged and chargeable with one equal fourth part of the said annual sum or yearly rent-charge of £——, in exoneration of the said hereditaments comprised in the said first, second, and fourth schedules to these presents, and the said hereditaments, the particulars whereof are comprised in the said fourth schedule to these presents, shall be charged and chargeable with the remaining equal fourth part of the said annual sum or yearly charge of £——, in exoneration of the said hereditaments, the particulars whereof are comprised in the said first, second, and third schedules to these presents: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that if, at any time or times hereafter, any claim or demand shall be made upon the said hereditaments and premises mentioned and comprised in the said first schedule to these presents, or any of them, or any part thereof, or upon the owner or owners, occupier or occupiers of the same premises, for or in respect of the three equal fourth parts hereby respectively charged upon the said

FREEHOLDS AND COPYHOLDS.

Proviso, that a certain rent-charge shall be henceforth charged in equal parts on the four shares.

Cross powers of distress to secure the apportionment of the rent-charge —as to the hereditaments in the first schedule;

FREEHOLDS AND COPYHOLDS.

hereditaments and premises respectively mentioned and comprised in the second, third, and fourth schedules to these presents, of the said annual sum or yearly rent-charge of £——, or any part thereof respectively; and the said A. B., her heirs or assigns, shall, in consequence of any such claim or demand, pay any sum or sums of money, or be put unto or sustain any loss, damage, costs, charges, or expenses whatsoever, then, and in every or any such case, it shall be lawful for the said A. B., her heirs or assigns, to enter into and upon the hereditaments and premises, the owner or owners, occupier or occupiers whereof shall have made default in payment of the part or parts hereby charged on the same respectively, of the same annual sum or yearly rent-charge of £——, and to distrain thereupon for all such sum or sums of money, losses, damages, costs, charges, or expenses, which she the said A. B., her heirs or assigns, shall so pay or be put unto or sustain as aforesaid, and also the costs, charges, and expenses of or relating to such distress or distresses, in such and the same manner as landlords may distrain for rent reserved by lease or common demise: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that if, at any time or times hereafter, any claim or demand shall be made upon the said hereditaments and premises mentioned and comprised in the said second schedule to these presents, or any of them, or any part thereof, or upon the owner or owners, occupier or occupiers of the same premises, for or in respect of the three equal fourth parts hereby respectively charged upon the said hereditaments and premises respectively mentioned and comprised in the said first, third, and fourth schedules to these presents, of the said annual sum or yearly rent-charge of £——, or any part or parts thereof respectively, and the person or persons for the time being entitled to the said hereditaments and premises comprised in the said second schedule hereto, shall, in consequence of any such claim or demand, pay any sum or sums of money, or incur or sustain any losses, damages, costs, charges, or expenses whatsoever, then, and in every or any such case, it shall be lawful for the last-mentioned person or persons, their executors or ad-

—as to those in the second schedule;

FREEHOLDS AND COPYHOLDS.

ministrators, to enter into and upon the hereditaments and premises, the owner or owners, occupier or occupiers whereof shall have made default in payment of the part or parts hereby charged on the same respectively, of the said annual sum or yearly rent-charge of £——, and to distrain thereupon for all such sum or sums of money, losses, damages, costs, charges, or expenses, which the person or persons, so for the time being entitled to the said hereditaments and premises comprised in the said second schedule hereto, shall so pay or be put unto or sustain as aforesaid, and also all the costs, charges, and expenses of or relating to such distress or distresses, in such and the like manner as landlords may distrain for rent reserved by lease or common demise: [*Similar declarations as to the hereditaments comprised in the third and fourth schedules respectively, to those set out as to the hereditaments in the first and second schedules respectively* (*l*)]: AND EACH OF THEM the said C. D., E. F., L. M., and N. P., so far only as relates to his own acts and deeds, doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., her heirs and assigns, that they the said C. D., E. F., L. M., and N. P., have not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by

—and those in the third and fourth schedules.

Covenants by the trustees for right to exercise the powers, and against incumbrances.

(*l*) As the agreement for the apportionment of a rent-charge among the owners of separate parts of the lands charged with it cannot affect the right of the owner of the rent-charge to come upon any portion of the property for the entire rent-charge, the only way to effectuate such an apportionment is, to provide the several owners of the separate portions of the land with indemnities out of the other portions for any part of the rent-charge which they may be compelled to pay over and above their apportioned parts of it. This may be conveniently enough effected by means of cross power of distress, as in the case in the text; and if circumstances will admit, mutual covenants for indemnity may be added. (See the remarks on this subject, ante, Vol. 3, p. 75, n. (*e*)).

Apportionment of rent-charges between the owners of the subject lands.

It seems that a rent-charge may be divided by the act of the law or the act of the party, (without the consent of the owner of the lands charged), so as to subject the lands to several distresses for the divided parts. (*Rivis* v. *Watson*, 5 Mee. & Wels. 255).

FREEHOLDS AND COPYHOLDS.

reason or means whereof they are in anywise hindered or prevented from exercising the said several powers of revocation and appointment hereinbefore respectively exercised by them respectively as aforesaid, or whereby or by reason or means whereof the said hereditaments and premises comprised in the said first schedule to these presents, or any of them, or any part thereof, or any undivided part or share thereof, or of any of them, or of any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever: [*Similar covenants by the same persons with H. B., her heirs and assigns, as to the hereditaments in the third schedule—similar covenant by C. D. and E. F. with L. M. and N. P., their heirs and assigns, as to the hereditaments in the second schedule—similar covenant by L. M. and N. P. with C. D. and E. F., their heirs and assigns, as to the hereditaments in the fourth schedule* (*m*)]: AND THE SAID G. H., so far as relates to the said undivided fourth part or share to which the said C. D. and E. F., as such trustees as aforesaid, became entitled as hereinbefore is mentioned, of and in the freehold and copyhold hereditaments comprised in the said first schedule to these presents, and the power to appoint and convey and surren-

Covenants for title as to the hereditaments in the first schedule;

With whom covenants in partition deeds should be entered into so as to run with the land.

(*m*) In the present case distinct covenants are entered into as to the lands in each schedule with the owner of those lands; and this is essential as relates to the copyholds, because there is no releasee of the copyholds with whom covenants can be entered into*. So it is necessary as to freeholds, where the legal estate in one or more of the shares is settled, and the partition is made by means of an appointment or appointments under a legal power or legal powers, for then covenants entered into with a releasee would not run with the land. (Ante, Vol. 3, p. 232, n. (*o*)). But where the whole legal estate in all the shares, as in the present case, and in Precedent XV. (infra), passes by the conveyance by lease and release, covenants entered into with the releasee will run with the lands, and be available to the several persons who take under the limitations subsequently declared of their several shares. Probably in the present case distinct sets of covenants were applied to the freehold because they were required for the copyhold.

* As to whether the covenants in respect of the copyholds will run with the lands, see ante, Vol. 3, p. 305, note.

FREEHOLDS AND COPYHOLDS.

der the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for himself, his heirs, executors, and administrators, and the said H. B., so far as relates to the undivided fourth part or share to which she the said H. B. became entitled as hereinbefore is mentioned of and in the same premises, and the right to convey and surrender the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for herself, her heirs, executors, and administrators, and the said C. D., so far as relates to the undivided fourth part or share to which the said L. M. and N. P., as such trustees as aforesaid, became entitled as hereinbefore is mentioned of and in the same premises, and the power to appoint and convey and surrender the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., her heirs and assigns, in manner following: (that is to say), that, for and notwithstanding any act, deed, matter, or thing by the said G. H. and J. H., H. B., C. D., and Q. D., or any of them, or the said J. B., or any of the ancestors of the said J. H., H. B., and C. D., made, done, committed, or executed, or knowingly or willingly suffered to the contrary (*n*): THEY THE SAID C. D. and E. F., G. H. and J. H., H. B., L. M., and N. P., and C. D. and Q. D., now have in themselves, respectively, good right, full

—for right to appoint and convey;

(*n*) It would, in strictness, be proper to introduce a covenant by the unmarried coparcener, that she is seised in fee-simple of her share in the freehold, and for an absolute estate of inheritance of her share in the copyhold, (see the form, ante, Vol. 3, p. 326), and covenants by the tenants for life, that the powers in their respective settlements were well created, and are now in force, and (in most cases) that they have right to consent. (See ante, Vol. 3, p. 233). They were probably omitted on account of the great length to which the deed had already run, and partly as being inconsistent with the general frame of the covenants. The manner in which they can be conveniently introduced may be gathered from Precedent XV. (infra). The absence of these covenants is not of much consequence, as they imply very little, if anything, more than is contained in the covenants for right to appoint and convey.

Omission of the covenants for seisin, and for the validity of the power.

FREEHOLDS AND COPYHOLDS.

power, and lawful and absolute authority to direct, limit, and appoint, and grant, bargain, sell, release, and confirm the said three last-mentioned undivided fourth parts or shares of and in the said freehold hereditaments comprised in the said first schedule to these presents, with the appurtenances, to the use of the said A. B., her heirs and assigns for ever, in manner aforesaid, according to the true intent and meaning of these premises, and also to appoint and surrender, or procure to be surrendered, the said three last-mentioned undivided fourth parts or shares of and in the said copyhold hereditaments comprised in the said first schedule to these presents, with the appurtenances, to the use of the said A. B., her heirs and assigns for ever, in manner aforesaid, according to the true intent and meaning of these presents: AND THAT it shall be lawful for the said A. B., her heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said three last-mentioned undivided fourth parts or shares of the said freehold and copyhold hereditaments comprised in the said first schedule to these presents, and to receive and take the rents, issues, and profits thereof, and of every part thereof, accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by them the said G. H. and J. H., H. B., C. D., and Q. D., or any of them, their or any of their heirs or assigns, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them or any of them, or by, from, or under the said J. B., or any of the ancestors of the said J. H., H. B., and C. D., (other than and except any person or persons claiming in respect of the one fourth part hereinbefore intended to be charged on the said hereditaments comprised in the said first schedule to these presents, of the said annual sum or yearly rent-charge of £——): AND THAT free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said G. H., H. B., and C. D., or some or one of them, their or some or one of their heirs, executors, or administrators, well and sufficiently saved, defended, kept

—for quiet enjoyment;

—free from incumbrances;

harmless, and indemnified, of, from, and against all and all manner of former and other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered by the said G. H., J. H., H. B., C. D., and Q. D., or any of them, their or any of their heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them, or any of them, or by, from, or under the said J. B., or any of the ancestors of the said J. H., H. B., and Q. D., (other than and except the said one fourth part intended to be hereby charged on the said freehold and copyhold hereditaments comprised in the said first schedule to these presents, of the said annual sum or rent-charge of £——): AND FURTHER, THAT they the said G. H. and J. H., H. B., and C. D. and Q. D., and every of them, their and every of their heirs, and all and every other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said three last-mentioned undivided fourth parts or shares of and in the said freehold and copyhold hereditaments comprised in the said first schedule to these presents, or any part thereof, by, from, or under or in trust for them, the said G. H., J. H., H. B., C. D., and Q. D., or any of them, their or any of their heirs, or by, from, or under the said J. B., or any of the ancestors of the said J. H., H. B., and Q. D., (other than and except any person or persons claiming in respect of the said one fourth part intended to be hereby charged upon the hereditaments comprised in the said first schedule to these presents, of the said annual sum or yearly rent-charge of £——), shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges in the law of the said A. B., her heirs or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, surrenders, and assurances in the law whatsoever, for the

FREEHOLDS AND COPYHOLDS.

—and for further assurance.

FREEHOLDS AND COPYHOLDS.

further, better, more perfectly and absolutely appointing, granting, conveying, surrendering, and assuring of the said three last-mentioned undivided fourth parts or shares of and in the said freehold and copyhold hereditaments comprised in the said first schedule to these presents, with their appurtenances, to the use of the said A. B., her heirs and assigns, as by the said A. B. her heirs or assigns, or her or their counsel in the law, shall be reasonably devised, or advised and required: AND THE SAID A.B., so far as relates to the undivided fourth part or share to which she the said A. B. became entitled as hereinbefore is mentioned of and in the freehold and copyhold hereditaments comprised in the said second schedule to these presents, and the right to convey and surrender the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for herself, her heirs, executors, and administrators, and the said H. B., so far as relates to the undivided fourth part or share to which she the said H. B. became entitled as hereinbefore is mentioned of and in the same premises, and the right to convey and surrender the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for herself, her heirs, executors, and administrators, and the said C. D., so far as relates to the undivided fourth part or share to which the said L. M. and N. P. (as such trustees as aforesaid) became entitled as hereinbefore is mentioned of and in the same premises, and the power to appoint and convey and surrender the same, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof, doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their heirs and assigns, in manner following: (that is to say), THAT &c. [*Covenants for title as to the hereditaments in the second schedule, similar to the preceding covenants as to the hereditaments in the first schedule—similar covenants with H. B., her heirs and assigns, as to the hereditaments in the third schedule by the owners of the hereditaments in the first, second, and fourth schedules—similar covenants with L. M. and N. P., their heirs and assigns, as to the hereditaments in the fourth schedule, by*

Covenants as to the hereditaments in the second schedule;

—and as to the hereditaments in the third and fourth schedules.

the owners of the hereditaments in the first, second, and third schedules]. IN WITNESS &c. (*o*).

FREEHOLDS AND COPYHOLDS.

(*o*) To give validity to the conveyances by married women, (supra, pp. 215, 216), the deed must be acknowledged by them. (See ante, Vol. 3, p. 198). The words "dispose of" should also be introduced into their conveyances; and the expression "and as to the said [*woman*], with the concurrence of the said [*husband*], testified by his being a party to and executing these presents." But, in the present case, it is the conveyance by the trustees which is effective.

Conveyances by married women.

XV.

PARTITION *by* TENANTS FOR LIFE *and in* TAIL *of a* MANOR, ADVOWSON, *and* FREEHOLD *Lands—the* MANOR *being taken in* SEVERALTY *by one Party.*

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., [*tenant for life of one moiety*], of the first part; C. B., of &c., [*tenant in tail of the same moiety*], of the second part; D. E., of &c., [*tenant for life of part of the other moiety*], of the third part; F. E., G. E., H. E., and I. E., all of &c., spinsters, [*tenants in tail of the same moiety*], of the fourth part; and C. D., of &c., [*releasee*], of the fifth part: WHEREAS K. L., late of &c., duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby, (after reciting that he was seised in fee-simple of the reversion), subject to the life estate of his wife, M. L., of the manor and advowson of ——, in the county of ——, and other the messuages, lands, and hereditaments comprised in the settlement made on his marriage with her, situate in the parishes of ——, in the same county, and that since his said marriage he had added to the said settled estates a cottage and garden in the parish of ——, then occupied by ——, which he received in exchange, and also divers lands and hereditaments in the

Parties.

Recital of a will devising manor, advowson, and lands, to devisees to uses;

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

parishes of —— and ——, which he the said testator had purchased in fee-simple, and that he had purchased the land-tax on all his said estates, devised all the said manors, advowsons, messuages, lands and hereditaments, and land-tax (except the cottage and garden at ——, then occupied by ——, and the land-tax thereon) to X. and Y., to the several uses, trusts, and purposes, and under and subject to such powers, provisoes, and declarations as are thereinafter mentioned of and concerning the same: (that is to say), As to the said after-purchased lands and hereditaments and land-tax, to the use of his said wife, the said M. L., for her life, With remainder, as to one third of and in all the said premises thereinbefore devised, to the use of his the said testator's daughter N. P. for her life, without impeachment of waste: With remainder to the use of the said X. and Y., their executors, administrators, and assigns, during the life of the said N. P., in trust for her, and to preserve the contingent remainders thereinafter limited: With remainder to the use of such son of the said N. P., or such grandson being the issue of a deceased son of the said N. P., and the heirs of the body of such son or grandson, with such remainders in succession to any other of such sons or grandsons, and the heirs of their respective bodies, as the said N. P. should, by any deed or deeds, or by her last will, either revocably or irrevocably appoint the same: And in default of and subject to such appointment, to the use of the first and every other son of the said N. P. successively, according to their respective seniorities, in tail general: With remainder to the use of such daughter or daughters of the said N. P., and the heirs of their respective bodies, either severally, or in such shares, and with such remainders in succession, to any others of such daughters, and the heirs of their respective bodies, as the said N. P. should in manner therein mentioned appoint the same: And in default of and subject to such appointment, to the use of all and every the daughters and daughter of the said N. P., equally between them as tenants in common in tail general, with cross remainders between them in tail general: And as to one other undivided third part of the same premises, to the use of his the said testator's daughter, the said A. B., (then the wife of R. B., now deceased), and her sons,

—to use of testator's wife M. L. for life;

—with remainder, as to an undivided third part, to his daughter N. P. for life;

—with remainder to the use of trustees, to preserve contingent remainders;

—with remainder in tail to such son or grandson as N. P. should appoint;

—and, in default, to her first and other sons in tail;

—with remainder to her daughters as she should appoint in tail;

—and, in default, to the daughters, as tenants in common in tail, with cross remainders.

And as to another undivided third part, to similar uses, in favour of A. B.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

grandsons, and daughters respectively, in like manner, and with the like power of appointment as the former third part was devised to the said N. P., and her sons, grandsons, and daughters respectively (*a*): AND AS TO THE OTHER undivided third part, to the use of his the said testator's daughter S. E., (then S. L., and afterwards the wife of the said D. E.), and her sons, grandsons, and daughters respectively, in like manner, and with the like powers of appointment: AND THE SAID testator by his said will declared that in case there should be a failure of issue of one of his said three daughters, then the third part of the said premises devised to her whose issue should so fail, should devolve on the two other of his said daughters or their issue who should be then in possession under the limitations aforesaid, of the remaining two third parts of the said premises, so that his two daughters who should then survive, or the issue of such of them as should have left issue then surviving, should take the same estates and interests to themselves and their respective descendants as tenants in common in the third part, so devolving on them as last aforesaid, as should then be capable of taking effect under the aforesaid limitations in their original shares in the said premises: AND THE SAID testator, by his said will limited a power to each of them the said N. P., A. B., and S. E., at any time or times thereafter, by any instrument in writing duly executed and attested, either revocably or irrevocably to limit and appoint any part or parts of the said hereditaments and premises to which she should be entitled for an estate for her life under the limitations aforesaid, to any husband whom she then had or should thereafter marry, for the term of his life, or for any less estate: AND WHEREAS the said S. E. intermarried with the said D. E. before the date and execution of the codicil next hereinafter recited: AND WHEREAS the said K. L. duly made, signed, and published a codicil, bearing date the —— day of ——, to his said will, and thereby

and her children.

And as to the remaining undivided third part, to similar uses, in favour of S. E. and her children;

—with cross limitations as to the undivided third parts;

—and with power to the daughters to give their husbands life estates.

Recital of the marriage of S. E. with D. E.;

—of a codicil to the will, directing that

(*a*) The practice of declaring uses by reference to antecedent uses, for similar classes of persons, is not to be commended, as it always gives rise to the additional consideration, whether the reference is effective and complete. There are many cases in which such references have failed of the effect, or the full effect intended.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

D. E. should be presented to the living on the first vacancy;

—of the testator's death;

—of the will of S. E., giving to her husband D. E. a life estate in her third;

—of D. E. having been presented to the living;

—of the death of S. E.;

—of her leaving four daughters;

—of the death of N. P. and her husband;

—of the death of the husband of A. B.;

—of C. B. being the first son of A. B.;

revoked and altered certain parts of his said will, which did not affect the hereinbefore-recited devise, and by the said codicil the said testator devised unto the said X., his executors and administrators, the next turn of presentation to the rectory of —— aforesaid, in trust nevertheless for him or them to present thereto the said D. E. when the same should become vacant, and in all other respects, except as aforesaid, the testator by the said codicil confirmed and republished his said will: AND WHEREAS the said testator died on the —— day of —— without having revoked or altered his said will, except so far as the same was altered by the said codicil, and without having revoked or altered the said codicil: AND WHEREAS the said S. E. duly made, signed, and published her last will and testament in writing, bearing date the —— day of ——, and thereby, in exercise of the power in that behalf given to her by the said will of the said K. L., limited and appointed all and singular the undivided third part, so devised to her for her life by the will of the said K. L. as aforesaid, of and in the said manor, advowson, messuages, lands, hereditaments, and land-tax, from and after her decease, unto and to the use of the said D. E. and his assigns for his life: AND WHEREAS, shortly after the death of the said testator, the said rectory of —— became vacant, and the said X., in pursuance of the trust for that purpose reposed in him as aforesaid, presented the said D. E. thereto, and the said D. E. was duly instituted and inducted to and is now the incumbent of the said rectory: AND WHEREAS the said S. E. died in the month of —— without having revoked or altered her said will: AND WHEREAS the said F. E., G. E., H. E., and I. E. are the only children of the said S. E., and have all attained their ages of twenty-one years: AND WHEREAS the said Q. P. died in the lifetime of the said N. P., and the said N. P. died in the year —— without having married again, and without having had any issue: AND WHEREAS the said R. B. died on the —— day of —— last: AND WHEREAS the said C. B. is the first son of the said A. B., and has attained his age of twenty-one years (*b*): AND WHEREAS

(*b*) The narrative recitals of this deed have been given at length, as affording a good example of the manner in which, in deeds of family arrangement, the history of the family must be told.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

the said A. B. and C. B., and the said D. E., F. E., G. E., H. E., and I. E. have respectively agreed to make a partition, in manner hereinafter mentioned, of the said manor, advowson, messuages, lands, and hereditaments devised by the said will of the said K. L., to the uses and in manner aforesaid, except a certain wood having a cottage within it, and certain lands containing together —— or thereabouts, and lying in the said parish of ——: AND WHEREAS, upon the treaty for the said partition, it was agreed that the said wood, cottage, and lands should be sold, and that the monies which should arise from the said sale should, after deducting therefrom the expenses incident to the said sale, be paid and applied in or towards the discharge of the expenses of or incident to the said partition, and that the surplus (if any) which should remain after the discharge of the said expenses should be paid and divided in equal shares between the said A. B. and D. E. for their respective use and benefit: AND WHEREAS, upon the treaty for the said partition, it was also agreed, that, for the purpose of effecting the same, the said A. B. should, in pursuance of the power for that purpose to her given by the said will of the said K. L., by reference as hereinbefore is mentioned, appoint the undivided moiety or half part which she had power to appoint of the said manor, advowson, messuages, lands, and hereditaments so agreed to be partitioned as aforesaid, unto the use of the said C. B. in tail general, and that the said A. B. and C. B. should bar and defeat the estate in tail general, and all other estates tail of the said C. B. in the said undivided moiety or half part, or any other part of the said manor, advowson, messuages, lands, and hereditaments, and all remainders, reversions, estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estate or estates in tail, and that the said D. E., F. E., G. E., H. E., and I. E. should bar and defeat the estates in tail general and all other estates in tail of the said F. E., G. E., H. E., and I. E. respectively, in the remaining undivided moiety or half part, or any other part of the said manor, advowson, messuages, lands, and hereditaments so agreed to be partitioned as aforesaid, and all remainders, reversions, estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estates in

—of the agreement for partition, except as to a wood;

—to be sold to pay expenses;

—and of an agreement that A. B. should appoint to C. B. in tail, and that all parties should bar their entails;

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

tail: AND WHEREAS the particulars of all the said hereditaments, of which partition was agreed to be made as aforesaid, (except the said manor and advowson), are mentioned and comprised in the two schedules to these presents, and are delineated in the map or plan drawn in the margin of these presents (*c*): AND WHEREAS, on the treaty for the said partition, it was agreed that such of the said hereditaments as are mentioned and comprised in the first schedule to these presents, and are in the said map or plan coloured ——, should be taken in severalty by the said A. B. and C. D., and be conveyed, assured, and limited in such manner and to such uses as they should desire: and that such of the said hereditaments as are mentioned and comprised in the second schedule to these presents, and are in the said map or plan coloured ——, and also the said manor, should be taken in severalty by the said D. E., F. E., G. E., H. E., and I. E., and be conveyed, assured, and limited in such manner and to such uses as they should desire, and that the said A. B. and C. B., or one of them, should, for equality of partition, pay the sum of £—— to the said D. E., F. E., G. E., H. E., and I. E., to be divided among them in such shares and manner as they should think fit, and that the said advowson should be limited in equal undivided moieties to the uses hereinafter declared of the same respectively, and that a partition should be made thereof in manner hereinafter mentioned: AND WHEREAS, in pursuance of the said agreement in that behalf, the said wood, cottage, and lands so agreed to be sold as aforesaid, have been sold, and part of the monies arising from the said sale, after deducting the expenses thereof, has been already applied in defraying the expenses of and incident to the said partition, and the residue of the said monies is now in the hands of —— to answer the purposes hereinbefore mentioned in that behalf: AND WHEREAS, in pursuance of the said agreement in this behalf, the said A. B., by a deed-poll under her hand and seal bearing even date with, but executed before, these presents, hath, in pursuance of the power for that purpose to her given by the said will of the said K. L. by reference as hereinbefore is mentioned, appointed that all that the one

—of the particulars of the estates being mentioned in schedules, and of a map;

—of the particulars of the partition;

—of the sale of the wood, and application of the purchase-money;

—of the appointment to C. B. in tail;

(*c*) See as to parcels in partition deeds, *supra*, p. 212, n. (*c*).

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

equal undivided moiety or half part which she the said A. B. had power to appoint of and in all and singular the same manor, advowson, messuages, lands and hereditaments, and land-tax by the said will of the said K. L. devised as therein and hereinbefore is mentioned, (except the said wood, cottage, lands, and hereditaments which have been sold as aforesaid), should thenceforth (but subject and without prejudice to the estate for life therein of her the said A. B.) go, remain, and be to the use of the said C. B. and the heirs of his body: AND WHEREAS the said A. B. and C. B. are desirous that the said hereditaments, so to be taken by them in severalty as aforesaid, shall be limited to the uses and subject to the powers hereinafter declared and contained of and concerning the same, and the said D. E., F. E., G. E., H. E., and I. E. are desirous that the said manor and hereditaments, so to be taken by them in severalty as aforesaid, shall be limited to the uses and in the manner hereinafter declared and mentioned of and concerning the same; and it has been agreed that these presents shall contain such declaration respecting the said advowson as is hereinafter contained: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and for effectuating the said partition, and in consideration of the sum of £—— to the said D. E., F. E., G. E., H. E., and I. E., at or immediately before the delivery of these presents, paid by the said A. B. and C. B., (the receipt, &c., *supra*, *p.* 213), and in consideration of the premises, she the said A. B., so far as relates to the undivided moiety or half part of which she is tenant for life as aforesaid, hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, and he the said C. B., as far as relates to the same undivided moiety or half part, and with the consent of the said A. B., (testified by her being a party to and executing these presents), hath granted, released, disposed of, and confirmed, and by these presents doth grant, release, dispose of, and confirm, and he the said D. E., so far as relates to the said undivided third part of which he is tenant for life as aforesaid, hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, and they the said F. E., G. E., H. E., and I. E., so far as relates to the undivided moiety

—of the desire of the parties as to the limitations of the estates to be taken by them in severalty.

Witnesseth, conveyance of all the lands by all parties to a releasee.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

or half part of which they are tenants in common in tail as aforesaid, and with the consent (so far as such consent is necessary) of the said D. E., (testified &c., *supra*), have, and each of them hath, granted, released, disposed of, and confirmed, and by these presents do, and each of them doth, grant, release, dispose of, and confirm unto the said C. D. (in his actual possession now being by virtue of a bargain and sale thereof to him made, according to their respective interests, by the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E., in consideration &c., *ante, Vol. 3, pp. 192, 240*) and his heirs: ALL THAT THE MANOR of —— aforesaid, with the rights, members, and appurtenances; AND ALSO ALL THAT THE ADVOWSON, right of patronage, and presentation of or to the rectory or parish church of —— aforesaid, with the appurtenances; AND ALL AND SINGULAR the messuages, lands, hereditaments, and land-tax by the said will of the said K. L. devised to the uses and in manner aforesaid, (except the said wood, cottage, and lands which have been sold as aforesaid), and which messuages, lands, and hereditaments intended to be hereby released are more particularly mentioned or described in the said two schedules to these presents, and are delineated in the said map or plan drawn in the margin of these presents [*general words*]: TO HAVE AND TO HOLD the said manor, advowson, messuages, lands, and hereditaments, and all and singular other the premises hereby granted, released, and disposed of, or expressed and intended so to be, unto the said C. D. and his heirs, (freed and discharged from the said estate in tail, and all other estates in tail of the said C. B., and from the said estates in tail, and all other estates in tail of the said F. E., G. E., H. E., and I. E. respectively, and from all remainders and reversions thereupon, respectively, expectant or depending, and all estates, rights, title, interests, and powers, to take effect after the determination or in defeazance of such estates in tail respectively), to the uses and subject to the powers, agreements, and declarations hereinafter limited, declared, and contained of and concerning the same respectively: (that is to say), AS TO ONE UNDIVIDED EQUAL MOIETY or half part of the advowson aforesaid, and as to all the said messuages, lands, and hereditaments mentioned and comprised in the said first schedule to

Parcels.

Habendum to the releasee freed from the estates tail.

To uses as to one moiety of the advowson, and as to the lands in one schedule.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

these presents, and in the said map or plan drawn in the margin of these presents coloured ——, and the land-tax payable out of or chargeable upon the same, with their appurtenances (*d*): To THE USE of the said A. B. and her assigns, for her life, without impeachment of waste, and from and after the determination of that estate, by forfeiture or otherwise, in the lifetime of the said A. B., To THE USE of the said C. D. and his heirs during the life of the said A. B., upon trust, to preserve the contingent uses and estates hereinafter limited of the same from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require, but nevertheless to permit and suffer the said A. B. and her assigns to receive and take the rents, issues, and profits of the said premises to her and their own use during her life, and from and after the death of the said A. B., To THE USE of such son of the said A. B., or such grandson, being the issue of a deceased son of the said A B., and the heirs of the body of such son or grandson, with such remainders in succession to any other of such sons or grandsons, and the heirs of their respective bodies, as the said A. B. shall, by any deed or deeds, or by her last will, either revocably or irrevocably appoint the same, and in default, and until such appointment, and so far as no such appointment shall extend, To THE USE of the said C. B. and the heirs of his body, and in default of issue of the body of the said C. B., To THE USE of the second and every other son of the said A. B. severally and successively, in remainder, one after another as they shall be in seniority of age and priority of birth, and of the several and respective heirs of their bodies, the elder of such sons, and the heirs of his body, to take before the younger of such sons, and the heirs of their respective bodies, and in default of such issue, To THE USE of such daughter or daughters of the said A. B., and the heirs of their respective bodies, either severally or in such shares, and with such remainders in succession, to any others of such daughters, and the heirs of their respective bodies, either severally or in such shares, and with such remainders in succession, to any others of such daughters, and the heirs of their respective bodies, as the said A. B. shall,

(*d*) See supra, p. 217, n. (*h*).

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

by any deed or deeds, or by her last will, either revocably or irrevocably appoint the same, and in default of and until such appointment, and so far as no such appointment shall extend, To THE USE of all and every the daughters and daughter of the said A. B., and the heirs of their respective bodies, issuing in equal shares as tenants in common, and if any one or more of the said daughters shall die without issue of her or their body or respective bodies, then as well as to the original share or shares of the daughter or daughters so dying, and of whom there shall be such failure of issue as hereinbefore is mentioned, as to the share or shares which shall have survived or accrued to any such daughter or daughters, or to the heirs of her or their body or respective bodies: To THE USE of the other or others of the daughters of the said A. B., and the heirs of their respective bodies issuing, if more than one, in equal shares as tenants in common, and if all the daughters of the said A. B. but one shall die without issue, or there shall be but one such daughter, then as to the entirety of and in the said last-mentioned premises, To THE USE of such one or such only daughter and the heirs of her body issuing, and for default of such issue, To THE USE of the said A. B., her heirs and assigns for ever: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B., at any time or times hereafter, by any instrument in writing duly executed by her and attested, either revocably or irrevocably to limit and appoint any part or parts of the said hereditaments and premises to which she shall be entitled for an estate for her life, under the limitations hereinbefore contained, to any husband whom she shall hereafter marry, for the term of his natural life or for any less estate (*e*): AND AS TO TWO UNDIVIDED EQUAL THIRD parts of the manor (*f*) aforesaid, and of the said messuages, lands,

And as to the manor and lands in the

(*e*) The uses declared of the lands taken in severalty, are such of those to which the undivided moiety, in lieu of which they were respectively allotted, stood limited immediately before the execution of the partition, as were capable of taking effect. Of course, however, any uses may be declared which the parties choose.

(*f*) As to the partition of a manor, see Co. Litt. 165. b., and Id., n. (2); see, too, Gilb. Ten. 209; Golds. 37, 155.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

and hereditaments mentioned and comprised in the said second schedule to these presents, and in the said map or plan drawn in the margin of these presents coloured ——, and of the land-tax payable out of or charged upon the same, with the appurtenances, To THE USE of the said D. E. and his assigns for his life; AND AS TO THE OTHER undivided moiety or equal half part of the advowson aforesaid, and the other undivided equal third part of the manor aforesaid, and of the said messuages, lands, and hereditaments mentioned and comprised in the said second schedule to these presents, and in the said map or plan coloured ——, and of the land-tax payable out of or charged upon the same, with the appurtenances, and also from and after the death or sooner determination of the estate of the said D. E., as to the said two first-mentioned undivided equal third parts of the said last-mentioned premises, and the appurtenances, To THE USE of the said F. E., G. E., H. E., and I. E., and the heirs of their respective bodies, issuing in equal shares as tenants in common; And if any one or more of them, the said F. E., G. E., H. E., and I. E., shall die without issue of her or their body or respective bodies, then as well as to the original share or shares of her or them so dying without issue as aforesaid, as to the share or shares which shall have survived or accrued to any such of them, or to the heirs of her or their body or respective bodies, to the use of the other or others of them the said F. E., G. E., H. E., and I. E., and the heirs of their respective bodies issuing, in equal shares as tenants in common, and if all of them, the said F. E., G. E., H. E., and I. E., but one shall die without issue, then as to the entirety of the said last-mentioned premises, To THE USE of such one of them, and the heirs of her body, and for default of such issue, To THE USE of the said F. E., G. E., H. E., and I. E., their heirs and assigns for ever: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that as often as the said rectory and parish church of —— shall become vacant, the said A. B. or other the person or persons for the time being entitled in possession, under the limitations firstly hereinbefore contained, to the one equal undivided moiety of the said advowson thereof, and the person or persons for the time

other schedule, and the other moiety of the advowson to uses.

Partition of the advowson.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

being entitled in possession, under the limitations secondly hereinbefore contained, to the other equal undivided moiety of the said advowson thereof, shall severally present by their turns alternately in manner following; (that is to say), that the said A. B. or other the person or persons for the time being entitled in possession, under the limitations firstly hereinbefore contained, to the one equal undivided moiety of the said advowson, shall present for the first or next turn, and the person or persons for the time being entitled in possession, under the limitations secondly hereinbefore contained, to the other equal undivided moiety of the said advowson, shall present for the second or succeeding turn, and so alternately as often as the said rectory and parish church shall become vacant (*g*): AND THE SAID A. B., so far as relates to the said undivided moiety of which at the time of the sealing and delivery of these presents she is tenant for life as aforesaid, and to the acts and deeds of her and her heirs and assigns, and of the said K. L. and the said C. B., so far as relates to the same undivided moiety and to

Covenants by all parties as to their shares;

Partition of advowson.

(*g*) A partition may be made of an advowson, because, although it is an entire inheritance, the parties may present to it in turns. (Co. Litt. 164. b.). And the proper way of making a partition of an advowson is, to limit undivided shares to the several parties, and to add an agreement that they shall present in turn, in a specified rotation. (*The Bishop of Salisbury* v. *Phillips*, Carth. 505; S. C. 1 Salk. 43). See the frame of the precedent in the text, and of the partition in the case in Carthew. See, too, the case of a partition of an advowson between two coparceners, where one is within age. (F. N. B. 36, D.). If a manor, to which an advowson is appendant, be divided between coparceners, so that every one hath a part of the manor, without saying anything of the advowson, the advowson remains in coparcenary, and yet in every of their turns it is appendant to that part which they respectively have; and so it is if they make composition to present against common right, yet it remains appendant. But if, upon such a partition, an express exception be made of the advowson, then the advowson remains in coparcenary and in gross. (Co. Litt. 122. a.).

In the case in the text, as D. E. was the incumbent, it was not thought worth while to limit any interest to him in the advowson, in respect of his life estate in two undivided third parts of the property. But if he had been likely to resign the living, his interest might have been of some value on a sale of a presentation in his lifetime, and the contingency must have been provided for.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

the acts and deeds of himself, his heirs and assigns, and of the said K. L., and the said D. E., so far as relates to the said undivided third part, of which at the time of the sealing and delivery of these presents he is tenant for life as aforesaid, and to the acts and deeds of himself, his heirs and assigns, and of the said K. L., and each of them the said F. E., G. E., H. E., and I. E., so far as relates to the undivided moiety, of which at the time of the sealing and delivery of these presents they are tenants in common in tail as aforesaid, and to her own acts and deeds, and the acts and deeds of her heirs, and the acts and deeds of the said K. L., doth covenant with the said C. D. and his heirs (*h*) by these presents following: (that is to say), THAT, for and notwithstanding any act, deed, matter, or thing whatsoever by them the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, or by the said K. L., made, done, committed, or executed, or knowingly or willingly suffered, to the contrary, at the time of the sealing and delivery of these presents she the said A. B. is rightfully and absolutely seised of and in, or well and sufficiently entitled to, one undivided moiety or equal half part of the said manor, advowson, messuages, lands, hereditaments, and premises hereinbefore granted, released, and disposed of, or expressed and intended so to be, for a good, sure, absolute, and indefeasible estate for her life, without any restraint, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same: AND he the said C. B. is rightfully and absolutely seised of and in, or well and sufficiently entitled to, the said last-mentioned undivided moiety of the same premises, for a good, absolute, and indefeasible estate of inheritance in fee tail general, without any restraint, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same: AND he the said D. E. is rightfully and absolutely seised of and in, or well and sufficiently entitled to, one equal undivided third part of the said premises, for a good, absolute, and indefeasible estate for his life, without any

—for title.

(*h*) As to the persons who should be the covenantees in partition deeds, see supra, p. 224, n. (*m*).

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

restraint, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same: AND that they the said F. E., G. E., H. E., and I. E. respectively, are rightfully and absolutely seised of and in, or well and sufficiently entitled to, one equal undivided moiety or half part of the said premises, for good, absolute, and indefeasible estates of inheritance in fee tail as tenants in common, without any restraint, cause, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same, (except and subject to the said life estate in two undivided third parts thereof of the said D. E.):

—for right to convey;

AND THAT, for and notwithstanding any act, deed, matter, or thing whatsoever, as aforesaid, they the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E., now have in themselves respectively good right, full power, and lawful and absolute authority, to grant, release, dispose of, and confirm the said manor, advowson, messuages, lands, and other hereditaments and premises hereby granted and released, or expressed and intended so to be, and the undivided parts and shares thereof hereinbefore mentioned, to the uses and in manner aforesaid, according to the true intent and meaning of these presents:

—for quiet enjoyment;

AND THAT the said hereditaments respectively comprised in the said two schedules to these presents, and also the said manor and the said two several moieties of the said advowson respectively, shall and may, from time to time and at all times hereafter, go and remain to the uses, upon the trusts, and subject to the powers, agreements, and declarations hereinbefore limited, declared, and contained of and concerning the same respectively, and be, respectively, peaceably and quietly entered into and upon, and be had, held, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof respectively, and of every part thereof respectively, had, received, and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by them the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, or their respective heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them respectively, or by, from, or under the said K. L.:

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

AND THAT free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, or their respective heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered, by the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, or their respective heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them, or any of them, or by, from, or under the said K. L.: AND FURTHER, THAT they the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, and their respective heirs, and all and every other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, interest, or inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said manor, advowson, messuages, lands, and other hereditaments hereby granted and released, or expressed and intended so to be, or any of them, or any undivided part or share thereof, by, from, or under or in trust for them the said A. B., C. B., D. E., F. E., G. E., H. E., and I. E. respectively, or their respective heirs, or by, from, or under the said K. L., shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges in the law of the person or persons requiring the same, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said manor, advowson, messuages, lands, and other hereditaments hereby granted and released, or expressed and intended so to be, and every undivided part

—free from incumbrances;

—and for further assurance.

BY TENANTS FOR LIFE AND IN TAIL OF AN ADVOWSON AND LANDS.

thereof, to the uses, upon the trusts, and subject to the powers, provisoes, and agreements hereinbefore declared of the same respectively, as by the person or persons for the time being interested in the same respectively, under or by virtue of the limitations hereinbefore contained, or his or their counsel in the law, shall be reasonably devised, or advised and required. IN WITNESS &c.

XVI.

AS TO ONE OF SEVEN SHARES.

PARTITION *as to* ONE *Seventh Part of* TWO FREEHOLD *Estates, held under different Limitations, and in different Shares, by Tenants in Common. The remaining* SIX SEVENTH *Parts being* RE-LIMITED *to the Persons previously entitled thereto in their former Shares.* COVENANTS *as to the Payment of a* LIFE ANNUITY, *and* ASSIGNMENT *of a* TERM *to attend the Inheritance.*

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., C. B., of &c., D. B., of &c., E. B., of &c., G. B., of &c., I. B., of &c., and H. B. his wife, and A. C., of &c., and B. C. his wife, (formerly B. B., spinster), [*the tenants in common*], of the first part; C. D., of &c., [*releasee*], of the second part; the said A. C. and B. C., [*the persons to take the one seventh share*], of the third part; the said A. B., C. B., D. B., E. B., G. B., and I. B., [*the remaining tenants in common*], of the fourth part; and E. F., of &c., [*a trustee*], of the fifth part: WHEREAS, by indentures of lease and release, and assignment, bearing date respectively the —— and —— days of ——, the release being made or expressed to be made between [*parties*], the pieces or parcels of land, situate &c., (being part of the lands and hereditaments hereinafter particularly mentioned, and intended to be hereby released), were conveyed and assured to the use of A. B., now deceased, (the father of the said A. B. party hereto, C. B.,

Recital of a settlement of one estate (subject to the life estates of A. B. and L. B., and an annuity) upon the children of A. B. and L. B., in fee, as tenants in common;

D. B., E. B., G. B., I. B., and B. C.), and his assigns for his life, with remainder to the use of L. B. his wife, and her assigns for her life, with remainder to the use of all and every the child and children of the said L. B., by the said A. B., deceased, begotten or to be begotten, who should be living at the decease of the survivor of them the said A. B., deceased, and L. B., and of their heirs and assigns for ever, to take as tenants in common and not as joint tenants, subject, nevertheless, to the payment of an annual sum of £1 1*s.* to E. M. and her assigns for her life: AND WHEREAS the said A. B., deceased, being seised or entitled for an estate of inheritance in fee-simple of or to the messuage, lands, and hereditaments in his will mentioned, duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby, after directing all his debts and funeral expenses to be paid, and charging all his real and personal estates with the payment thereof, gave and devised unto the said L. B. and her assigns, for her life, all that messuage or tenement which he then inhabited, with the building and lands thereto belonging, which he purchased of ——, (being the remaining part of the lands and hereditaments hereinafter mentioned, and intended to be hereby released), and all his the testator's estate and interest therein, and after the decease of the said L. B., the said testator charged the same with the payment of £10 to his daughter, the said B. C., then B. B., spinster, and he thereby gave and devised the said messuage, lands, buildings, and premises, after the death of his said wife, and subject to the said legacy of £10 unto his sons, the said A. B. party hereto, C. B., D. B., E. B., G. B., and I. B., and to his daughters, M. B., the said B. C., and N. B.: To hold to them his said sons and daughters, their heirs and assigns for ever, equally amongst them as tenants in common and not as joint tenants: AND WHEREAS the said A. B., deceased, died in the month of —— without having revoked or altered his said will, leaving the said L. B., A. B., party hereto, C. B., D. B., E. B., G. B., I. B., M. B., B. C., and N. B., him surviving: AND WHEREAS the said M. B. died in the month of ——, without having

AS TO ONE OF SEVEN SHARES.

—of the will of A. B., devising a second estate (subject to the life of L. B., and a legacy) to his sons and daughters, as tenants in common in fee;

—of the death of A. B., leaving certain children him surviving;

—of the death of one daughter

AS TO ONE OF SEVEN SHARES.

been married, and intestate, leaving the said A. B., party hereto, her eldest brother her heir at law: AND WHEREAS the said N. B. died in the month of ——, without having been married, and intestate, leaving the said A. B., party hereto, her eldest brother, her heir at law: AND WHEREAS the said L. B. died in the month of ——, leaving the said A. B., C. B., D. B., E. B., G. B., I. B., and B. C., and no other child living at her death: AND WHEREAS all the debts and funeral expenses of the said A. B., deceased, and the said legacy of £10 to the said B. C., given by his said will, have been long since paid and satisfied: AND WHEREAS the said B. C., (formerly B. B., spinster), intermarried with and is now the wife of the said A. B.: AND WHEREAS the said A. B., party hereto, C. B., D. B., E. B., G. B., I. B., A. C., and B. C., some time since agreed to make a partition, in manner hereinafter mentioned, of the said lands and hereditaments comprised in the said indentures of the —— and —— days of ——, and of the said messuage, lands, and hereditaments devised by the said will of the said A. B., deceased, so far as relates to the said A. C. and B. C.: AND WHEREAS, upon the treaty for the said partition, it was agreed that the hereditaments firstly hereinafter particularly mentioned, and intended to be firstly hereinafter released, should be taken in severalty by the said A. C. and B. C., subject nevertheless to, and charged with, the payment of 3*s.* per annum (being one equal seventh part of the said annual sum of £1 1*s.*) to the said E. M. and her assigns for her life, and that all and singular other the hereditaments comprised in the said indentures and will respectively, and intended to be secondly hereinafter released, should be conveyed and assured to the use of the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., their heirs and assigns, as tenants in common, in the shares and in manner hereinafter mentioned (*a*): AND WHEREAS the said A. C. and B. C. are

unmarried and intestate;

—of the death of another daughter unmarried and intestate;

—of the death of L. B., leaving the present tenants in common her only surviving children;

—of the debts, funeral expenses, and legacy of A. B., having been paid;

—of one of the daughters' marriage;

—of the agreement for partition;

—of the mode in which it is intended to effectuate the partition;

—of the desire

(*a*) The usual mode of describing the parcels in partition deeds will be seen in the two last precedents; and see, too, supra, p. 212, n. (*c*). The small size of the property taken in severalty in the present case rendered the employment of a schedule unnecessary.

desirous that the hereditaments hereinafter particularly mentioned, and intended to be firstly hereinafter released, should be limited to the uses and in manner hereinafter mentioned: AND WHEREAS the said H. B. has agreed to join in these presents, for the purpose and in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for effectuating the said partition, they the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., have, and each of them hath, granted, released, and confirmed, and by these presents do, and each of them doth, grant, release, and confirm; and the said B. C., with the concurrence of the said A. C., (testified by his being a party to and executing these presents), hath granted, released, and disposed of, and by these presents doth grant, release, and dispose of; and the said H. B., with the concurrence of the said I. B., (testified by his being a party to and executing these presents), and for the purpose of releasing and extinguishing her right of dower out of or in the hereditaments intended to be hereby released, and every part thereof, doth by this present deed release and dispose of, unto the said C. D. (in his actual possession now being, by virtue of a bargain and sale thereof to him made by the said A. B., party hereto, C. B., D. B., E. B., G. B., I. B., A. C., and B. C., in consideration of five shillings apiece, &c. (*ante, Vol. 3, p.* 198)) and his heirs, ALL and singular the pieces or parcels of land and hereditaments comprised in the said indentures of the —— and —— days of ——; and all and singular the messuage, pieces or parcels of land, and hereditaments devised by the said will of the said A. B., deceased: [*General words, adding to the* "all the estate" *clause*, "except out of this present grant and release, a term of five hundred years hereinafter more particularly mentioned, and subsisting in the said hereditaments comprised in the said indentures of the —— and —— days of ——, and now vested in the said C. B. (*b*)"]: To

AS TO ONE OF SEVEN SHARES.

of the parties taking the one seventh in severalty that it should be settled in a particular manner;

—of the agreement of the wife of one of the co-tenants to join.

Witnesseth.

Conveyance to the releasee.

Parcels.

General words.

Habendum to

(*b*) Whenever one of the conveying parties is possessed of a subsisting term in the property, which it is intended shall be kept on foot, it should be excepted out of the release in the form in the text. For although, if it were assigned by a separate witnessing part of

As to excepting a term out of a conveyance of the estate, in which the

AS TO ONE OF SEVEN SHARES.

the releasee to uses.

HAVE AND TO HOLD the said pieces or parcels of land, messuage, and hereditaments, and all and singular other the premises hereinbefore released, or expressed and intended so to be, unto the said C. D. and his heirs, to the uses, upon and for the trusts, intents, and purposes, and with and subject to the powers, hereinafter limited, declared, and contained of and concerning the same respectively: (that is to say), AS TO ALL THAT &c., [*description*], being part of the said hereditaments comprised in the said indentures of the —— and —— days of ——, and being the pieces or parcels of land delineated in the map or plan drawn in the margin of these presents, and therein numbered 1 and 2 respectively, [*or* " therein coloured ——"], subject to the payment of the annual sum of three shillings to the said E. M. and her assigns for her life, being one equal seventh part of the said annual sum of twenty-one shillings, wherewith the said hereditaments comprised in the said indentures of the —— and —— days of —— are charged as aforesaid: AND AS TO ALL THAT &c., [*similar description of some pieces of land devised by the will*], with the rights, easements, and appurtenances as aforesaid (*c*); TO THE USE of &c., [*to A. C. for life—*

As to part of the property in the settlement and will to uses in severalty, in favour of one tenant in common.

---

termor joins in another character.

the same deed, the probability is, that it would be held to have been excepted out of the prior release by implication, yet this risk should never be run, but the exception should be expressed. It is a consideration against the implied exception, that if two parts of a deed be inconsistent, the first in order will be held to prevail. (See Cru. Dig. Tit. 32, c. 20, ss. 7 & 8; 2 Bl. Comm. 381; Hard. 94). If the term do not necessarily appear on the face of the principal deed, it should of course be assigned by a separate deed, except, where (as in the case in the text) the property is so small as not to warrant the additional expense. (See ante, Vol. 3, p. 450, n.). The separate assignment must precede the conveyance, in order to avoid the necessity of expressly excepting the term out of the conveyance.

The way in which terms not necessarily appearing on the conveyance are dealt with, when it is intended to assign them by the conveyance, will be seen infra, p. 251.

In the present case the term is merged as to one seventh, unless there be some intervening estate.

(*c*) As to the propriety of inserting general words after each limitation, see supra, p. 217, n. (*h*).

AS TO ONE OF SEVEN SHARES.

remainder to trustees to preserve contingent remainders—remainder to B. C. for life—remainder to trustees to preserve contingent remainders—remainder to the children of A. C. and B. C., as they or the survivor shall appoint—and in default of appointment to the use of all the children equally as tenants in common in fee. See infra, title SETTLEMENTS]: AND AS TO ALL and singular such and so many and such part and parts of the said piece or parcels of land, comprised in the said indentures of the —— and —— days of ——, as are not hereinbefore particularly described and limited as aforesaid: AND ALSO, as to all and singular such and so many, and such part and parts of the said pieces or parcels of land, devised by the said will of the said A. B., deceased, as are not hereinbefore particularly described and limited as aforesaid, with the rights, easements, and appurtenances as aforesaid (*d*): TO THE USES hereinafter limited and declared concerning the same respectively: (that is to say), AS TO ALL such and so many, and such part and parts of the said hereditaments and premises, as were comprised in the said indentures of the —— and —— days of ——, (subject, nevertheless, and charged with the payment of the annual sum of eighteen shillings to the said E. M. and her assigns for her life, being six equal seventh parts of the said annual sum of twenty-one shillings, wherewith the said hereditaments are charged as aforesaid): TO THE USE of the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., their heirs and assigns, in equal shares as tenants in common: AND AS TO ALL such and so many, and such part and parts of the said hereditaments and premises as were devised by the said will of the said A. B., deceased, TO THE USE of the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., their heirs and assigns, as tenants in common, in the shares and proportions following: (that is to say), AS TO three equal eighth parts or shares thereof, (the whole into eight equal parts or shares being considered as divided), TO THE USE of the said A. B., party hereto, his heirs and assigns: AND AS TO the remaining five equal

And as to the residue to the use of remaining tenants in common in their former shares.

(*d*) See supra, p. 217, n. (*h*).

AS TO ONE OF SEVEN SHARES.

eighth parts or shares thereof, To THE USE of the said C. B., D. B., E. B., G. B., and I. B., or in equal shares as tenants in common, and their respective heirs and assigns: AND THE SAID A. C. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and his heirs, that he the said A. C., his heirs, executors, or administrators, or the said B. C. or her heirs, or the person or persons for the time being seised of or entitled to the lands and hereditaments hereinbefore particularly described, and firstly hereinbefore limited as aforesaid, or some of them, shall and will, at all times hereafter, well and truly pay, or cause to be paid, to the said E. M. or her assigns, during her life, the said annual sum of three shillings, in satisfaction and discharge of one equal seventh part or share of the said annual sum of twenty-one shillings hereinbefore mentioned, and shall and will save, defend, keep harmless and indemnified, the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., and every of them, their and every of their heirs and assigns, and also the said hereditaments and premises secondly hereinbefore limited, or expressed and intended so to be, and every part thereof, of, from, and against all actions, suits, accounts, reckonings, claims, demands, losses, and damages whatsoever, for or in respect of the same, or in anywise relating thereto: AND THE SAID A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., do hereby for themselves, their heirs, executors, and administrators, and each of them doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and his heirs, that they the said A. B., party hereto, C. B., D. B., E. B., G. B., and I. B., and their heirs or assigns, or some or one of them, shall and will, at all times hereafter, well and truly pay, or cause to be paid, to the said E. M. or her assigns, during her life, the said annual sum of eighteen shillings, in satisfaction and discharge of six equal seventh parts or shares of the said annual sum of twenty-one shillings hereinbefore mentioned, and shall and will save, defend, keep harmless and indemnified, the said A. C. and B. C., their and each of their heirs and assigns, and also the said hereditaments and premises firstly herein-

Covenants as to payment of that proportioned part of the annuity which is charged on the land taken in severalty.

Covenants as to the residue of the annuity.

before limited, or expressed and intended so to be, and every part thereof, of, from, and against the payment of the said annual sum of eighteen shillings, and of, from, and against all actions, suits, accounts, reckonings, claims, demands, losses, and damages whatsoever, for or in respect of the same, or in anywise relating thereto (*e*): AND EACH OF THEM the said A. B., party hereto, C. B., D. B., E. B., G. B., I. B., and A. C., so far &c.: [*Separate and qualified covenants with C. D. and his heirs—for title—for right to convey—for quiet enjoyment—free from incumbrances—except the respective parts of the annuity—and for further assurance—see supra, p. 240*] (*f*): AND WHEREAS, by the said indenture of the —— day of ——, all and singular the said lands, hereditaments, and premises thereby released, or expressed and intended so to be, were assigned unto the said C. B., his executors, administrators, and assigns, for the residue of the said term of five hundred years, created by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], in trust for the said A. B., deceased, his executors, administrators, and assigns, and to be from time to time transferred as the said A. B., deceased, should direct, and in the meantime to attend the inheritance thereof, to protect the same from all mesne incumbrances (*g*): AND WHEREAS the said

AS TO ONE OF SEVEN SHARES.

Recital of the existence of a term in the settled hereditaments;

—of the desire

(*e*) The annuity is so trifling that the apportionment by means of mutual covenants is deemed sufficient. The method of apportioning more important annuities, may be seen supra, p. 221; and see supra, p. 223, n. (*l*).

(*f*) The covenants are properly entered into with the releasee and his heirs. (See supra, p. 224, n. (*m*)).

(*g*) Terms already attendant are assigned by the principal deed, only when the property is deemed too small to bear the expense of a separate deed. (See ante, Vol. 3, p. 450, n.; supra, p. 247, n. (*b*). And when they are so assigned, the recitals connected with them (contrary to the general practice) are placed after the principal witnessing part and covenants, and immediately before the assignment. There is no good reason for this, but such is the practice. The form of the recitals is nearly always that in the text.

As to the assignment of attendant terms by the principal deed.

With respect to the assignment of terms in general, see ante, Vol. 3, p. 449, n. (*a*); and p. 453, n. (*d*).

AS TO ONE OF SEVEN SHARES.

A. C. and B. C. are desirous that all such and so many, and such part and parts of the hereditaments and premises, comprised in the said term of five hundred years, as are hereinbefore particularly described, and firstly hereinbefore limited, or expressed and intended so to be, shall be assigned to the said E. F., his executors, administrators, and assigns, upon the trusts and in manner hereinafter mentioned (*h*): NOW THIS INDENTURE ALSO WITNESSETH, that, for effectuating the said desire, and in consideration of the premises, he the said C. B., with the privity and by the direction of the said A. B., party hereto, D. B., E. B., G. B., and I. B., and upon the nomination and appointment of the said A. C. and B. C., (testified by their severally being parties to, and executing these presents), hath assigned, and by these presents doth assign, unto the said E. F., his executors, administrators, and assigns: ALL SUCH and so many, and such part and parts of the said hereditaments and premises by the said indenture of the —— day of —— assigned, or expressed and intended so to be, unto the said C. B., his executors, administrators, and assigns, for the residue then to come of the said term of five hundred years, as are hereinbefore particularly described, and are firstly hereinbefore limited, or expressed and intended so to be, with their appurtenances (*i*): AND ALL the estate &c., (other than and except such estate and interest of the said C. B. in the said premises as are hereinbefore granted and released, or expressed and intended so to be): TO HAVE AND TO HOLD the said hereditaments, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., his executors, administrators, and assigns, for all the residue now to come of the said term of five hundred years; IN TRUST for the several persons who shall from time to time be entitled to or interested under the limitations hereinbefore contained in reversion expectant on the

that the terms in such of the premises as are taken in severalty, should be assigned to attend.

Witnesseth further, assignment of the term in the premises taken in severalty.

rcels.

And all the estate.

Habendum.

In trust to attend the inheritance;

(*h*) With respect to the structure of this recital, see ante, Vol. 3, p. 456, n. (*g*).

(*i*) As to the mode in which parcels are described in assignments of terms, see ante, Vol. 3, p. 457, n. (*h*).

AS TO ONE OF SEVEN SHARES.

said term of five hundred years, of and in such of the premises therein comprised as are hereinbefore assigned, or expressed and intended so to be, and to assign and dispose of the same as they shall from time to time direct, and, in the meantime, upon trust, to permit the residue of the said term to wait upon and attend the reversion, freehold, and inheritance of the premises hereinbefore assigned, or expressed and intended so to be, and to protect the same from all mesne incumbrances, if any such there be (*k*), [*Covenant by the said C. B. with the said E. F., his executors, administrators, and assigns, against incumbrances, ante, Vol. 3, p.* 458]. IN WITNESS &c.

(*k*) See variation, ante, Vol. 3, p. 458, n. (*i*).

XVII.

PARTITION *of* LEASEHOLDS *by three Tenants in common* (*a*).

LEASEHOLDS.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., of the first part; C. D., of &c., of the second part; and E. F., of &c., of the third part: WHEREAS, by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*] for the considerations therein

Parties.

Recital of a lease to three tenants in common;

(*a*) As terms of years are not capable of being limited to uses, they cannot be parted like freeholds, by a conveyance by all parties of all the property to a releasee, and subsequent distinct declarations of uses of the parts taken in severalty. (See supra, p. 209). The partition of lands held for a term of years may be made either, as in the text, by assignments or releases by the different tenants of their undivided shares to each other, or by an assignment by all the tenants of all the property to a trustee, in trust, to assign the separate properties to the persons who are to take them in severalty, and an assignment accordingly. The last method necessarily requires more than one deed, but it is often resorted to.

Partition of leaseholds.

LEASEHOLDS.

mentioned, the said X. Y. did demise unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, ALL THAT &c. [*parcels*], to hold the same unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, in equal shares as tenants in common, from the —— day of —— then last past, for the term of —— years and —— months, wanting —— days, thence next ensuing, at the yearly rent of £——, payable half-yearly, as in the said indenture is mentioned, and under and subject to the covenants, conditions, and agreements therein contained, and on the part of the said lessees, their executors, administrators, and assigns, to be observed and performed: AND WHEREAS the said A. B., C. D., and E. F. have respectively agreed to make partition of the said hereditaments and premises in manner hereinafter mentioned, and to enter into the covenants hereinafter contained: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the assignments hereinafter contained, on the part of the said A. B., they the said C. D. and E. F. have, and each of them hath assigned, and by these presents do, and each of them doth assign unto the said A. B., his executors, administrators, and assigns, ALL THOSE the respective two equal undivided third parts or shares of them the said C. D. and E. F. of and in all such parts, allotments, and portions of the aforesaid piece or parcel of ground as in the map or plan delineated in the margin of these presents are respectively numbered —— and ——, and are coloured —— (*b*); AND ALL THE ESTATE, right, title, interest, term of years yet to come and unexpired, possibility, property, claim, and demand whatsoever, both at law and in equity, of them the said C. D. and E. F., and each of them, of, in, to, or upon the same premises, and every part thereof: TO HAVE AND TO HOLD the said two equal undivided third parts or shares, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said A. B., his executors, administrators, and assigns, for all the residue

—of the agreement for the partition.

Witnesseth, assignment by two of the tenants in common to the third of their shares in the part to be taken by him.

Parcels.

And all the estate.

Habendum.

(*b*) As to the description of parcels in partition deeds, see supra, p. 212, n. (*c*); p. 246, n. (*a*).

now to come of the said term of —— years and —— months, wanting —— days, under and subject to the payment of one equal third part of the aforesaid rent of £——, and to the observance and performance of the covenants, conditions, and agreements in the said indenture of lease contained, and on the part of the said lessees, their executors, administrators, and assigns, to be observed and performed, so far as the said covenants, conditions, and agreements relate to the said parts, allotments, and portions hereinbefore described, and two equal third parts whereof are hereinbefore assigned, or expressed and intended so to be: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the assignments hereinbefore and hereinafter contained on the part of the said C. D., they the said C. D. and E. F. have &c.: [*Similar assignment by A. B. and E. F. of their undivided third parts to C. D. in other parts of the demised premises*]: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the assignments hereinbefore respectively contained on the part of the said E. F., they the said A. B and C. D., have &c.: [*Similar assignment by A. B. and C. D. of their undivided third parts to E. F., in the remainder of the demised premises*] (*c*): AND EACH OF THEM the said A. B., C. D., and E. F., so far as relates to his own acts and deeds, and the acts and deeds of his executors, administrators, and assigns, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with each of the others of them, his executors, administrators, and assigns, in manner following; (that is to say), that they the said A. B., C. D., and E. F. respectively, have not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act,

Witnesseth further, similar assignment by two others of the tenants in common as to another part.

Similar assignment by two other of the tenants in common as to the remaining part.

Covenants by the tenants in common respectively with each other, that they have done no act to incumber;

(*c*) It is apprehended that this deed should have contained cross powers of distress, to indemnify the several parties against any payments which they may be compelled to make in respect of the rent and covenants to be paid and performed by the other parties. See the mode of framing such powers, supra, p. 221.

Cross powers of distress by way of mutual indemnity.

LEASEHOLDS.

mentioned, the said X. Y. did demise unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, ALL THAT &c. [*parcels*], to hold the same unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, in equal shares as tenants in common, from the —— day of —— then last past, for the term of —— years and —— months, wanting —— days, thence next ensuing, at the yearly rent of £——, payable half-yearly, as in the said indenture is mentioned, and under and subject to the covenants, conditions, and agreements therein contained, and on the part of the said lessees, their executors, administrators, and assigns, to be observed and performed: AND WHEREAS the said A. B., C. D., and E. F. have respectively agreed to make partition of the said hereditaments and premises in manner hereinafter mentioned, and to enter into the covenants hereinafter contained: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the assignments hereinafter contained, on the part of the said A. B., they the said C. D. and E. F. have, and each of them hath assigned, and by these presents do, and each of them doth assign unto the said A. B., his executors, administrators, and assigns, ALL THOSE the respective two equal undivided third parts or shares of them the said C. D. and E. F. of and in all such parts, allotments, and portions of the aforesaid piece or parcel of ground as in the map or plan delineated in the margin of these presents are respectively numbered —— and ——, and are coloured —— (*b*); AND ALL THE ESTATE, right, title, interest, term of years yet to come and unexpired, possibility, property, claim, and demand whatsoever, both at law and in equity, of them the said C. D. and E. F., and each of them, of, in, to, or upon the same premises, and every part thereof: TO HAVE AND TO HOLD the said two equal undivided third parts or shares, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said A. B., his executors, administrators, and assigns, for all the residue

—of the agreement for the partition.

Witnesseth, assignment by two of the tenants in common to the third of their shares in the part to be taken by him.

Parcels.

And all the estate.

Habendum.

(*b*) As to the description of parcels in partition deeds, see supra, p. 212, n. (*c*); p. 246, n. (*a*).

now to come of the said term of —— years and —— months, wanting —— days, under and subject to the payment of one equal third part of the aforesaid rent of £——, and to the observance and performance of the covenants, conditions, and agreements in the said indenture of lease contained, and on the part of the said lessees, their executors, administrators, and assigns, to be observed and performed, so far as the said covenants, conditions, and agreements relate to the said parts, allotments, and portions hereinbefore described, and two equal third parts whereof are hereinbefore assigned, or expressed and intended so to be: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the assignments hereinbefore and hereinafter contained on the part of the said C. D., they the said C. D. and E. F. have &c.: [*Similar assignment by A. B. and E. F. of their undivided third parts to C. D. in other parts of the demised premises*]: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the assignments hereinbefore respectively contained on the part of the said E. F., they the said A. B and C. D., have &c.: [*Similar assignment by A. B. and C. D. of their undivided third parts to E. F., in the remainder of the demised premises*] (*c*): AND EACH OF THEM the said A. B., C. D., and E. F., so far as relates to his own acts and deeds, and the acts and deeds of his executors, administrators, and assigns, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with each of the others of them, his executors, administrators, and assigns, in manner following; (that is to say), that they the said A. B., C. D., and E. F. respectively, have not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act,

Witnesseth further, similar assignment by two others of the tenants in common as to another part.

Similar assignment by two other of the tenants in common as to the remaining part.

Covenants by the tenants in common respectively with each other, that they have done no act to incumber;

(*c*) It is apprehended that this deed should have contained cross powers of distress, to indemnify the several parties against any payments which they may be compelled to make in respect of the rent and covenants to be paid and performed by the other parties. See the mode of framing such powers, supra, p. 221.

Cross powers of distress by way of mutual indemnity.

LEASEHOLDS.

deed, matter, or thing whatsoever, whereby or by reason or means whereof they are in anywise prevented or hindered from assigning the parts or shares and premises hereinbefore by them respectively assigned, or expressed and intended so to be: AND FURTHER, THAT they respectively, or their respective executors, administrators, or assigns, shall and will each of them well and truly pay, or cause to be paid, one equal third part of the aforesaid rent of £——, unto the person or persons for the time being entitled thereto, when and as the same rent of £—— shall from time to time become due and payable: AND ALSO shall and will lay out and expend the sum of £——, at least, in erecting one or more good and substantial messuage or messuages on the aforesaid parts, allotments, or portions, whereof two equal undivided third parts have been hereinbefore assigned to them respectively as aforesaid (*d*): AND SHALL and will well and effectually save, defend, and keep harmless and indemnified, the others and each of the others of them, and their and his respective executors, administrators, and assigns, of, from, and against the payment of the equal third part of the aforesaid rent of £——, and all arrears thereof, and of, from, and against all actions, suits, distresses, re-entry, right or title of re-entry, claims, or demands, for or in respect of the said equal third part of the said rent, or the non-payment thereof, or for or in respect of the said sum of £——, or any part thereof, not being so laid out by him as aforesaid, or for or in respect of the breach, or non-observance, or non-performance of any of the covenants, conditions, or agreements in the said indenture of lease contained, so far as the same relate to the parts, allotments, or portions of land, whereof two undivided equal third parts have been so assigned to him respectively as aforesaid (*e*). IN WITNESS &c.

—and for payment of their respective shares of the rent;

—and to lay out a certain sum in building;

—and for mutual indemnity.

(*d*) This was of course required by the original lease.

Covenants for title in partitions of leaseholds.

(*e*) As there is no releasee, the covenants are of course entered into by the parties with each other. If the assignment had been to a trustee, in trust to assign the several parts to the intended owners,

the covenants in the assignment to him would have been entered into with him, and his covenants against incumbrances, in the several assignments by him, would have made the chain complete.

The Precedent in the text was taken from a draft prepared some years ago by a living conveyancer of reputation, but it is apprehended that the covenants are not those which would now be deemed appropriate. The following covenants will probably come nearer to those established in the practice of the present day, and are more general in their application. A covenant for the validity of the lease may be added, but it is hardly necessary, and perhaps not suited to the nature of the draft.

Covenants by the several parties;

AND EACH of them the said A. B., C. D., and E. F., so far as relates to the acts and deeds of himself, his executors, administrators, and assigns, and of the persons and person claiming or to claim under him and them, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with each of the others of them, his executors, administrators, and assigns, in manner following: (that is to say), THAT, for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said A. B., C. D., and E. F. respectively, made, done, committed, or executed, or knowingly or willingly permitted or suffered, to the contrary, they the said A. B., C. D., and E. F. respectively, now have in themselves respectively, good right, full power, and lawful and absolute authority, to assign the said undivided third parts or shares, and other the premises by them respectively hereinbefore assigned, or expressed and intended so to be, to the others of them and their respective executors, administrators, and assigns, for the residue now to come of the said term of —— years and —— months, wanting —— days, in manner aforesaid, according to the true intent and meaning of these presents: AND THAT it shall be lawful for them the said A. B., C. D., and E. F. respectively, and their respective executors, administrators, and assigns, from time to time and at all times hereafter during the said term of —— years and —— months, wanting —— days, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said hereditaments and premises, two equal third parts whereof are hereinbefore

—for right to assign;

—for quiet enjoyment;

LEASEHOLDS.

assigned to them respectively, and receive and take the rents, issues, and profits thereof, and of every part thereof, to and for their own use and benefit respectively, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of, from, or by the others or either of the others of them, their or his executors, administrators, or assigns, or any person or persons lawfully or equitably claiming or to claim by, from, through, under, or in trust for them or him: AND THAT free and clear, and freely and clearly acquitted, exonerated, and released, or otherwise, by the others or other of them, their or his executors or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other estates, titles, troubles, charges, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered by them or him, their or his executors or administrators, or any person or persons lawfully or equitably claiming or to claim by, from, through, under, or in trust for them or him: AND FURTHER, THAT they the said A. B., C. D., and E. F., and each of them, their and each of their executors and administrators, and all and every other person and persons whosoever having or claiming, or who shall or may have or claim, any estate, right, title, term, interest, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said hereditaments and premises, two equal undivided third parts whereof are hereinbefore assigned, or expressed and intended so to be, or any of them, or any part thereof, by, from, through, under, or in trust for them or any of them, their or any of their executors or administrators, shall and will, from time to time and at all times during the said term of —— years and —— months, wanting —— days, upon every reasonable request to be made for that purpose, by and at the costs of the person or persons requiring the same, make, do, and execute, and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, assignments, and assurances in the law whatsoever, for the fur-

—free from incumbrances;

—and for further assurance;

ther, better, more perfectly and absolutely assigning and assuring the said hereditaments and premises, two equal third parts whereof, are hereinbefore assigned, or expressed and intended so to be, and every part thereof, unto them the said A. B., C. D., and E. F. respectively, and their respective executors, administrators, and assigns, for the residue which shall be then to come of the said term of —— years and —— months, wanting —— days, as by them the said A. B., C. D., and E. F. respectively, or their respective executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required: AND THAT each of them the said A. B., C. D., and E. F., his executors, administrators, or assigns, shall and will henceforth, from time to time and at all times during the said term of —— years and —— months, wanting —— days, pay one equal third part of the said yearly rent of £——, by the said indenture of the —— day of —— reserved, and from and after the —— day of —— last to become payable, and observe and perform all and every the covenants, conditions, and agreements in the same indenture contained, and on the part of the lessee, his executors, administrators, or assigns, from and after the said —— day of —— last, to be observed or performed in respect of the premises, two equal third parts whereof are hereinbefore assigned to him, his executors and administrators: AND SHALL and will, from time to time and at all times hereafter, save, defend, keep harmless and indemnified, the others, and each of the others, of them the said A. B., C. D., and E. F., their and his executors and administrators, estates and effects, of, from, and against all actions, suits, damages, costs, expenses, claims, and demands, for or by reason or on account of the non-payment of the said equal third part of the said rent, or any part thereof, or the breach or non-observance or non-performance of the said covenants, conditions, or agreements, or any of them. IN WITNESS &c.

—and to pay the due proportion of rent, and perform the covenants in respect of the parts taken in severalty;

—and to indemnify the others in respect thereof.

EXCHANGES.

EXCHANGES.

General observations.

THE circumstances necessary for a Common Law Exchange are so special, and the tenure of lands holden under such a title is so inconvenient, that a proper exchange has become an almost obsolete species of assurance. See 4 Cru. Dig. by White, p. 74; ante, Vol. 3, p. 59, n. (*k*), p. 135, n. (*a*); and Vol. 1, p. 170, and Art. EXCHANGES.

The plan now resorted to is that of mutual conveyances, either by the same or different deeds, the consideration for each conveyance being the other conveyance referred to. This method must be pursued, unless both estates are so held as to enable a proper exchange to be effected; and even when a proper exchange can be effected, the advantage of getting rid of the power of mutual eviction usually leads to the plan of mutual conveyance. See the clauses as to Eviction at the end of this draft, and the references above.

XVIII.

CONVEYANCE BY WAY OF EXCHANGE.

CONVEYANCE *of* FREEHOLDS *in* EXCHANGE *for* FREEHOLDS *and* COPYHOLDS *conveyed and covenanted to be surrendered respectively, by Deed of even Date:* PROVISO NEGATIVING *the Right of Re-entry on Eviction:* VARIATION *where the right of Re-entry on Eviction is intended to be Reserved.*

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., [*the person conveying in exchange*], of the one part; and

CONVEYANCE BY WAY OF EXCHANGE.

C. D., of &c., [*the person taking in exchange*], of the other part; [*recites indentures of lease and release, whereby* "a piece or parcel of land containing by estimation ——, and now forming part of the piece or parcel of land hereinafter particularly mentioned, and intended to be hereby appointed and released," *was with other hereditaments conveyed and assured to uses to bar dower in favour of A. B.*— *and a deed of covenant to levy a fine, and the fine, whereby* "the piece or parcel of land containing by estimation ——, and now forming the other part of the piece or parcel of land hereinafter particularly mentioned, and intended to be hereby appointed and released," *was with other hereditaments also conveyed and assured to uses to bar dower in favour of A. B.*] (*a*): NOW THIS INDENTURE WITNESSETH, that, in consideration that the said C. D., by an indenture of release and covenant bearing even date with these presents, grounded, so far as the same operated as a release on a lease for a year, and made or expressed to be made between the said C. D. of the first part, the said A. B. of the second part, and E. F. of the third part, hath conveyed certain freehold hereditaments therein particularly mentioned, with their appurtenances, to the use of or in trust for the said A. B., his heirs, appointees, and assigns, in such manner as in the same indenture is men-

Recital of conveyances of the lands, to be given in exchange to uses to bar dower, in favour of the grantor.

Witnesseth.

Consideration.

(*a*) This Precedent is peculiar, and, according to ordinary rule, defective in omitting to recite an agreement for the exchange. The recital might be in the following form:—

Recitals of the precedent defective.

"AND WHEREAS the said A. B. has contracted and agreed with the said C. D., for the sale to him of the piece or parcel of land and hereditaments hereinafter particularly mentioned, and intended to be hereby appointed and released, with the appurtenances, and the inheritance thereof in fee-simple in possession, free from incumbrances, in consideration of the conveyance and covenant hereinafter mentioned to be made and entered into by the said C. D."

This recital would be followed by a recital of the conveyance of even date, and the consideration in the witnessing part would be stated by reference to the recital, or generally, as "in consideration of the premises."

CONVEYANCE BY WAY OF EXCHANGE.

tioned, and hath also covenanted to surrender certain copyhold hereditaments therein particularly mentioned, holden of the manor of ——, in the said county of ——, with their appurtenances, to the use of the said A. B., his heirs and assigns: AND, pursuant to, and by force and virtue of, and in exercise and execution of the several powers or authorities to the said A. B. given by the said indentures of the —— day of —— and the —— day of ——, and the said fine respectively, as hereinbefore is mentioned (*b*), and of every or any other power or authority in anywise enabling him in that behalf, he the said A. B. doth by this deed or instrument in writing, by him sealed and delivered in the presence of, and attested by, the two credible persons whose names are intended to be hereupon indorsed as witnesses to the sealing and delivery of these presents by him the said A. B., direct, limit, and appoint, that ALL SUCH part or parts of the pieces or parcels of land and other hereditaments hereinafter particularly mentioned, and intended to be hereby released, as was or were comprised in the hereinbefore recited indentures of the —— and —— days of ——, with the appurtenances, and also all such part or parts of the said pieces or parcels of land and other hereditaments hereinafter particularly mentioned, and intended to be hereby released, as was or were comprised in the hereinbefore recited indenture of the —— day of ——, and the said fine acknowledged and levied in pursuance of the same indenture, as hereinbefore is mentioned, with the appurtenances, shall henceforth go, remain, and be to the use of the said C. D., his heirs and assigns for ever: AND THIS INDENTURE ALSO WITNESSETH, that, for the considerations hereinbefore mentioned, he the said A. B., hath granted, aliened, released, and confirmed, and

Appointment.

Parcels.

Witnesseth further, grant and release.

(*b*) If two or more powers of appointment, which are to be exercised for the same object, are exercisable without any or with similar formalities, the appointment may be conveniently made in respect of all the powers at once by one witnessing part; (see infra, p. 268, n. (*c*)); but if there are different formalities to be observed in the exercise of the different powers, distinct witnessing parts will be at least convenient, even if not necessary.

When several powers may be exercised by one witnessing

CONVEYANCE BY WAY OF EXCHANGE.

by these presents doth grant, alien, release, and confirm unto the said C. D., (in his actual possession now being &c., *ante, Vol. 3, p.* 198), and to his heirs, ALL THAT piece or parcel &c. [*parcels—general words*]: TO HAVE AND TO HOLD the said piece or parcel of land and hereditaments, and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be, unto the said C. D., his heirs and assigns, to the use of the said C. D., his heirs and assigns for ever: [*Covenants by A. B. with C. D., his heirs and assigns—that the powers were well created—are in force—for right to appoint—for quiet enjoyment—free from incumbrances—and for further assurance—see ante, Vol. 3, pp.* 216 *and* 201]: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said parties to these presents, that, in case the said A. B. or his heirs (*c*) shall, at any time hereafter, be evicted from the said hereditaments comprised in the said indenture of release of even date with these presents, or any part thereof, he or they shall not, by reason or in consequence of such eviction, be entitled to re-enter upon or have any right, title, or interest, at law or in equity, of, in, or to the said hereditaments hereinbefore appointed and released, or expressed and intended so to be, or any part thereof (*d*). IN WITNESS &c.

Parcels.

Habendum.

Covenants for title.

Proviso that, on eviction from the lands taken in exchange, no right of re-entry shall accrue to the grantor.

(*c*) The appointees and assigns are not mentioned, because they have no common law right of eviction.

(*d*) A clause to this effect is greatly to be recommended, in order that it may not be necessary on every future occasion to shew both the titles as to each estate. (See ante, Vol. 1, p. 170; Vol. 3, p. 59, n. (*k*); p. 135, n. (*a*)).

As to clauses conferring the right of mutual re-entry on eviction.

As, however, parties may occasionally desire to be invested with the right of mutual re-entry on eviction, a form of a proviso framed for that purpose is subjoined. It will be seen that the clause is not adapted to the Precedent in the text.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said A. B., his heirs or assigns, shall at any time hereafter (without his or their wilful neglect or default) be evicted or turned out of the possession of the said piece or parcel of land and premises, which, by the indentures of lease and

Clause conferring the right of mutual re-entry on eviction.

CONVEYANCE BY WAY OF EXCHANGE.

release hereinbefore recited or referred to, have been conveyed, or expressed to be conveyed, by the said C. D. unto and to the use of the said A. B., his heirs and assigns, by any person or persons any estate, right, title, or interest, lawfully or equitably having or claiming, or to have or claim, in, to, or out of the same premises, so as that the said A. B., his heirs or assigns, shall or may be prevented or hindered from holding and enjoying the same, according to the true intent and meaning of the said indenture of release bearing even date herewith, then and in such case it shall be lawful for the said A. B., his heirs or assigns, into and upon the said piece or parcel of land and other hereditaments hereinbefore granted and released, or expressed and intended so to be, to enter, and to hold and enjoy the same, and to have and receive and take the rents, issues, and profits thereof, to his and their own use, in such and the same manner, to all intents and purposes whatsoever, as he or they might or could have done if these presents, and the lease for a year, upon which the same are grounded, had not been made or executed, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

XIX.

UNDER POWERS.

EXCHANGE *under* POWERS, *of Lands comprised in a* SETTLEMENT *and* WILL *respectively.*

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., [*the donee of the power in the settlement*], of the first part; C. D., of &c., [*the tenant for life under the settlement*], of the second part; E. F., of &c., G. H., of &c., and I. K., of &c., [*the donees of the power in the will*], of the third part; and L. M., of &c., [*the tenant for life under the will*], of the fourth part: [*Recital of the settlement, in which are in-*

Recital of the

UNDER POWERS.

cluded certain commons and waste lands—see ante, Vol. 3, pp. 280 and 281, n. (a)]: AND, by the said indenture now in recital, it was provided and declared, that it should be lawful for the said A. B. and [*his co-trustee*], and the survivor of them, and the heirs of such survivor, at any time or times after the solemnization of the said intended marriage, at the request, and by and with the consent and approbation, of the said C. D. and [*the intended wife*], during their joint lives, or the survivor of them during his or her life, to be signified by writing under their, his, or her hands and seals, or hand and seal, to sell and dispose of and convey, either by way of absolute sale, or in exchange for, and in lieu of other hereditaments &c. [*the power of sale and exchange recited at full length (a)*]: AND WHEREAS &c. [*recites the deaths of the wife and of the co-trustee of A. B.*]: AND WHEREAS X. and Y., the commissioners appointed under and by virtue of an act of Parliament, made and passed in the —— year of the reign of his late Majesty King ——, intituled, "An Act" &c., [*an Inclosure Act*], did by their award, bearing date the —— day of ——, set out, allot, and award unto the said A. B., his heirs and assigns, in lieu of and as a compensation for his and their right and interest in and to the soil of the said commons and waste lands: ALL THAT &c. [*allotment as described in the award*]: and the said commissioners did thereby set out, allot, and award to Z., of &c., his heirs and assigns, ALL THAT &c., [*allotment as described in the award*], in lieu of and in exchange for the piece or parcel of land and occupation road next thereinafter allotted and awarded to the said A. B., his heirs and assigns, and the said commissioners did further allot and award to the said A. B., his heirs and assigns, ALL THAT &c., [*allotment as described in the award*], in lieu of and in exchange for the piece or parcel of land called ——, last awarded to the said Z., his heirs and assigns, in exchange as aforesaid: AND WHEREAS the said several allotments were so set out and

settlement containing a power of sale and exchange;

—of the death of certain persons;

—of an award under an inclosure act, in lieu of common and waste lands, and of an exchange under the act;

—of the award having been made in re-

(a) As to the manner in, and the extent to which the limitations and powers of settlements should be recited, see ante, Vol. 3, p. 222, n. (c); p. 281, n. (a); p. 284, n. (b); and supra, p. 211, n. (a).

UNDER POWERS.

—spect of part of the settled lands;

allotted, and awarded in exchange respectively, to the said A. B., as aforesaid, in respect of parts of the hereditaments comprised in the hereinbefore recited indentures of lease and release [*the settlement*]: AND WHEREAS, under the

—of the awarded lands being tithe free;

provisions of the said Inclosure Act, the said allotments, made by the award as aforesaid, are freed and discharged from all tithes whatsoever: AND WHEREAS, &c. [*recites will of N. M., devising estates to trustees upon certain trusts, until L. M. (then L. R.) should attain twenty-four, then to him for ninety-nine years, if he should so long live*

—of will settling other lands, with a power of exchange;

—remainder to the trustees to preserve contingent uses, —remainder to the first and other sons of L. M. in tail— with similar remainders over to other persons for terms of ninety-nine years, determinable with their lives, and to trustees for their lives, and to their first and other sons in tail [*b*]: AND the said testator did thereby declare his will to be, that it should be lawful for the said E. F., P. Q., [*the trustee since retired, and to whose place G. H. has been appointed*], and I. K., and the survivors or survivor of them, and the heirs of such survivor, at any time or times, with the consent of such of the said devisees for ninety-nine years, as should for the time being be in possession of or entitled to his said estates thereby devised, such consent to be testified by any writing or writings sealed and delivered by the consenting party, in the presence of, and to be attested by, two or more credible witnesses, to convey in exchange for and

—of death of testator;

in lieu of other manors &c. [*power of exchange recited at full length*]: AND WHEREAS the said N. M. died on the —— day of ——, without having revoked or altered his

—of the devisee, tenant for life, having taken the name and arms of the testator;

said will: AND WHEREAS the said L. M., (then L. R.), shortly after the death of the said N. M., obtained his Majesty's license to take, use, and bear the surname and arms of M., in compliance with a direction in that behalf contained in the said will, and hath since used and borne the

—and having attained his age;

said surname and arms of M.: AND WHEREAS the said L. M. attained his age of twenty-four years on the ——

—of appointment of a new trustee of the will;

day of ——, [*recital of the appointment, under a power in the will, of G. H. to be a trustee in the room of P. Q., the*

(*b*) See the references, supra, n. (*a*).

retiring trustee, and of the conveyances of the devised estates to E. F., G. H., and I. K., to the uses &c. of the will]: AND WHEREAS it has been agreed between the said A. B., party hereto, at the request, and by and with the consent and approbation of the said C. D. (signified by this writing under his hand and seal) of the one part, and the said E. F., G. H., and I. K., with the consent and approbation of the said L. M., (testified by this writing under his hand, and sealed and delivered by him in the presence of, and attested by, the two credible persons whose names are intended to be hereupon indorsed as witnesses to the execution of these presents by him the said L. M.), of the other part, that an exchange shall be made in manner hereinafter mentioned, under the respective powers of exchange hereinbefore recited, of the said messuage or tenement, farm, lands, tithes, and other hereditaments of freehold tenure comprised in the hereinbefore recited indentures of the —— and —— days of ——, [*the settlement*], and of the said pieces or parcels of land allotted and given in exchange respectively to the said A. B., by the hereinbefore in part recited award, for the said messuage, farm, lands, and other hereditaments, called or known by the name of —— Farm, hereinafter more particularly mentioned, and the tithes thereof, being part of the hereditaments devised by the said N. M. to the uses and in manner hereinbefore mentioned: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement on the part of the said A. B., party hereto, and in consideration of the conveyance in exchange intended to be hereinafter made by the said E. F., G. H., and I. K., and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said A. B., party hereto, by the said indenture of the —— day of ——, [*the settlement*], for this purpose given, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he the said A. B., with the consent and approbation of the said C. D., signified as hereinbefore is mentioned, doth by this present deed or instrument in writing, sealed and delivered by him in the presence of, and attested by, the two credible persons whose names are

UNDER POWERS.

—of the agreement for the exchange.

Witnesseth. Revocation of the uses of the settlement.

UNDER POWERS.

intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said A. B., revoke, determine, and make void, all and every the uses, trusts, powers, and provisions, in and by the said indenture of the —— day of ——, [*the settlement*], limited, expressed, and declared of and concerning the messuage or tenement, farm, lands, tithes, and other hereditaments hereinafter appointed by him the said A. B., party hereto, or expressed and intended so to be: AND (*c*) [THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement on the part of the said A. B., party hereto, and in consideration of the conveyance in exchange intended to be hereinafter made by the said E. F., G. H., and I. K., and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said A. B., by the said indenture of the —— day of —— [*the settlement*] given, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he the said A. B., by and with the consent and approbation of the said C. D., (signified as aforesaid), doth by this present deed or instrument in writing, so sealed and delivered by him the said A. B., party hereto, and so intended to be attested as aforesaid], limit, declare, direct, and appoint, that ALL THAT the said messuage or tenement, farm, lands, tithes, and other hereditaments, comprised in and expressed to be granted and released by the hereinbefore recited indenture of the —— day of ——, [*the settlement*], and all the said several pieces or parcels of land by the said award respectively set out and allotted, and awarded in exchange respectively to the said A. B., as hereinbefore is mentioned, (save and except out of this present appointment, all such and so many, and such part and parts of the said hereditaments and premises particularly mentioned and comprised in the said indenture

Witnesseth further, appointment of the lands in the settlement to the uses of the will.

Except certain specified lands;

Revocation and appointment may be by one witnessing part.

(*c*) The revocation and appointment need not be by separate witnessing parts, unless they are to be exercised with different formalities. (See supra, p. 262, n. (*b*)). If they be by the same witnessing part, the reference will be to the "powers or authorities," and the words in brackets will be omitted.

of the —— day of ——, [*the settlement*], as, under and by virtue of the said Inclosure Act, have been allotted or awarded or given in exchange to any person or persons other than the said A. B., and also save and except all those several closes, pieces, or parcels of land, commonly called or known by the several and respective names of ——, and also, save and except all the tithes, tenths, and profits, and parts, pur-parts, and portions of tithes, tenths, and profits yearly coming, growing, renewing, happening, or increasing in, upon, or out of the said several excepted lands and hereditaments), all which said messuage, tenement, or farm, lands, and other hereditaments hereinbefore appointed and released, or expressed and intended so to be, are particularly mentioned according to their modern names and descriptions in the first schedule to these presents, [*general words*] (*d*), shall henceforth go, remain, and be to and upon such and so many of the uses and trusts, and to and for such and so many of the intents and purposes, and under and subject to such and so many of the powers, provisoes, and declarations by the hereinbefore recited will of the said N. M., limited, expressed, and declared of and concerning the said estates and hereditaments thereby devised, as are now subsisting undetermined, or capable of taking effect, IN EXCHANGE for the messuage, farm, lands, tithes, and other hereditaments hereinafter conveyed in exchange by the said E. F., G. H., and I. K., or expressed and intended so to be (*e*): AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., and

UNDER POWERS.

—and the tithes.

In exchange.

Covenant by the donee of the power, that he has done no

(*d*) The "all the estate" clause is omitted. (See ante, Vol. 3, p. 232, n. (*n*)).

(*e*) This clause, "In Exchange" &c., is probably added to comply with the terms of the power intended to be exercised; *i. e.* a power of exchange. Of course it is clear that the transaction is not a proper exchange, and many of the incidents of a proper exchange could not be annexed to it; but perhaps the expression of the intention may cause such of the incidents of an exchange as are practicable to attach to the transaction, at least in equity. As to the disadvantages of some of these incidents, see supra, p. 260, and p. 263, n. (*d*).

As to the addition of the words "In Exchange."

UNDER POWERS.

act to prevent his exercising the power, and against incumbrances.

their heirs (*f*), that he the said A. B., party hereto, hath not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, he the said A. B. is in anywise prevented or hindered from exercising, in manner hereinbefore mentioned, the power or authority hereinbefore exercised by him, or expressed and intended so to be, or whereby, or by reason or means whereof, the said messuage and tenement, farm, lands, tithes, and other hereditaments hereinbefore appointed, or expressed or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever: AND THE SAID C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., and their heirs, in manner following: (that is to say), [*Covenants that the powers were well created—and in force—that the tenant for life has power to consent—for right to appoint—for quiet enjoyment—free from incumbrances—and for further assurance—see ante, Vol. 3, p. 233*]: AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement on the part of the said E. F., G. H., and I. K., and in consideration of the conveyance in exchange hereinbefore made by the said A. B., and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said E. F., G. H., and I. K., by the said will of the said N. M., and the said indentures of the —— and —— days of ——, and the —— day of ——, [*the new trustee deeds*], or any of them, by reference to the said will, for this purpose given, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling them in this behalf, they the said E. F., G. H., and I. K., with the consent and approbation of the said L. M., testified by this writing so by him sealed and

Covenants by the tenant for life for title.

Witnesseth further, conveyance by the trustees of the will of the devised lands to the uses of the settlement.

(*f*) These covenants will not run with the land. (See ante, Vol. 3, p. 232, n. (*o*); Vol. 1, Art. COVENANTS).

UNDER POWERS.

delivered, and so intended to be attested as hereinbefore is mentioned, have, and each and every of them hath conveyed, and by these presents do, and each and every of them doth convey (*g*) all that messuage, farm, and lands, situate at ——, in the parish of ——, and the county of ——, the particulars whereof are mentioned in the second schedule to these presents, and also, all the tithes whatsoever, yearly coming, growing, renewing, happening, or increasing, in, upon, or out of the same farm, lands, and hereditaments, [*general words* (*h*)], to such and the same uses, upon such and the same trusts, and with, under, and subject to such and the same powers, provisoes, limitations, and agreements, as the said messuage or tenement, farm, lands, tithes, and other hereditaments hereinbefore conveyed in exchange by the said A. B., party hereto, or expressed and intended so to be, stood limited, or were liable to, immediately before the execution of these presents, IN EXCHANGE for the said messuage or tenement, farm, lands, tithes, and other hereditaments hereinbefore conveyed in exchange by the said A. B., party hereto, or expressed and intended so to be (*i*): AND EACH OF THEM the said E. F., G. H., and I. K., so far as relates to his own

In exchange.

Covenants by the trustees that they have

(*g*) This expression is peculiar, but of course it was the word used in the power, and must be considered as a word having the effect of a revocation and new appointment. (See ante, Vol. 3, p. 435, n. (*b*)).

Peculiar expression of power.

It may be observed, that it is the practice with many conveyancers in effectuating sales, exchanges, or partitions, by means of powers of sale, or exchange, or partition, given to the trustees to preserve contingent remainders, and to be exercised with the assent of the tenant for life, not to content themselves with a due exercise of the powers, but to add, by way of further assurance, a conveyance by lease and release by the trustees and tenant for life. This, however, is manifestly wrong, for as it can but pass the estate for life of the tenant for life, it cannot substantially improve the title if the power has been improperly exercised; and it seems to put an end to the chance of assistance under the covenant for further assurance, as the tenant for life, having parted with his estate, has probably thereby extinguished his right to assent to a further exercise of the power. (See 1 Sugd. Pow. Ch. 2, Sect. 2).

As to the addition of a conveyance after an exercise of a power in a settlement.

(*h*) See supra, n. (*d*).

(*i*) See supra, n. (*e*).

UNDER POWERS.

done no act to prevent their exercising their power, and against incumbrances.

acts and deeds, doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B. and his heirs (*k*), by these presents, that they the said E. F., G. H., and I. K. respectively, have not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, they the said E. F., G. H., and I. K. are in anywise prevented or hindered from exercising, in manner aforesaid, the power or authority hereinbefore exercised by them as aforesaid, or expressed and intended so to be, or whereby, or by reason or means whereof, the said messuage, farm, lands, tithes, and other hereditaments lastly hereinbefore conveyed in exchange, or expressed and intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever: AND THE SAID L. M. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B. and his heirs, by these presents, in manner following: (that is to say), That, for and notwithstanding any act, deed, matter, or thing, by him the said L. M., or the said N. M., or any of his ancestors, made, done, committed, or executed, or knowingly or willingly suffered, to the contrary &c. [*Covenants that the power was well created—is in force—that the tenant for life has right to consent—for right to convey—for quiet enjoyment—free from incumbrances—and for further assurance—see the covenants, ante, Vol. 3, p. 233*]. IN WITNESS &c.

Covenants by the tenant for life for title.

(*k*) See supra, n. (*f*).

XX.

EXCHANGE *under the* ACT *of the* 1 *&* 2 *Geo.* 4, *c.* 92, *of Lands belonging to a Charity, with the Forms of the Attestations* (*a*).

OF CHARITY LANDS.

THIS INDENTURE, made &c. BETWEEN The Governors of &c. [*the full title of the charitable corporation*], Parties.

(*a*) In preparing drafts of exchanges under the act referred to, the act itself must be diligently consulted, as the requisites for effecting an exchange under it are numerous and special. The recitals of the Precedent, however, and the following notes will suggest some of the matters which chiefly require attention. Reference to the act.

It is doubtful whether an exchange can be effected under the act, unless both estates are free from incumbrances and are in possession, without even an outstanding lease, at rack rent, for it is not clear how otherwise the directions of the 4th section, as to the delivery of possession, can be complied with; and the 9th section, providing a mutual right of re-entry on eviction or disturbance, seems to point to the same conclusion. The language of the act seems to contemplate only exchanges of freehold hereditaments, and does not appear suited to the cases of copyholds or leaseholds. The charity will, of course, be seised of their lands in fee-simple, but it will be necessary too, perhaps, that the owner of the lands given in exchange to the charity should have the whole estate in fee-simple in him, or in trust for him, so as to be capable of passing it by the bargain and sale which the act requires. It is apprehended that an appointment to the charity would not be within the protection of the act, so as to escape the penalties of the mortmain laws, when the charity is a corporation. It is for this reason that, although in the case in the text the lands of the party exchanging with the charity stand limited to the usual uses to bar dower in his favour, yet he is not made to exercise his power, but joins with his trustee in the conveyance by bargain and sale. General observations on exchanges under the act.

It has been suggested that a corporation cannot convey by bargain and sale, but there is no ground for this opinion, even independently of the directions in the act that the conveyance shall be by bargain

OF CHARITY LANDS.

of the first part; The Right Reverend [*christian name*], Lord Bishop of ——, [*the bishop of the diocese*], of the second part; A. B., of &c., [*the exchanging party*], of the third part; and C. D., of &c., [*his trustee*], of the fourth part: WHEREAS the said Governors of &c. [*full title*] are a body corporate, incorporated by letters patent of his late Majesty King ——, bearing date the —— day of ——, in the —— year of his reign, and are seised of (among other hereditaments) the pieces or parcels of land, messuages, buildings, and hereditaments, with their appurtenances, intended to be hereinafter given in exchange by them, and which are vested in them for the education and instruction, in the town of ——, of boys and youths in grammar, the modern languages, arts, and sciences, and for elementary instruction (*b*): AND WHEREAS, by indentures of lease and release bearing date, respectively, the —— and —— days of ——, the release being made or expressed to be made between [*parties*], the piece or parcel of land, messuages, buildings, and hereditaments, with the appurtenances, intended to be hereinafter given in exchange by the said A. B., were conveyed and assured to the use of such person or persons, for such estate or estates, and for such intent or intents, and in such shares and proportions, and upon such trusts, and charged and

Recital of the creation and objects of the charity, and of the seisin by the charity of the lands to be given in exchange;

—of the conveyance to uses to bar dower, of the lands to be taken in exchange;

---

and sale. (*Sir Thomas Holland* v. *Bonis*, 1 Leon. 183; 2 Leon. 121; 3 Leon. 175; Com. Dig. *Bargain and Sale*, (B. 3); Co. Litt. 271. b. n.).

(*b*) If the charity be not a corporation, but be in the hands of trustees, the directions given in the 6th section of the statute, as to the filling up of vacancies prior to the exchange, and as to the number of trustees whose concurrence is required before making an application to the bishop, must be observed. Of course all the existing trustees must be parties to the conveyance. The 7th section of the statute enables the bishop of the diocese to appoint trustees of charity lands of which there are no known trustees, and gives validity to exchanges effected by trustees so appointed. The 9th section enables a trustee of a charity himself to effect an exchange with the charity, the bishop appointing a trustee to act in lieu of the exchanging trustee in the matter of the exchange. But this provision does not apply when the charity is a corporation, although the exchanging party be a member of the corporation.

chargeable in such manner, either absolutely or conditionally, and subject to such powers of revocation and of new appointment, and other powers, as the said A. B. should, at any time or times and from time to time, in manner therein mentioned, direct, limit, or appoint, and in default of, and until, and subject to such direction, limitation, or appointment, to the use of the said A. B. for his life, without impeachment of waste, with remainder to the use of the said ——, his executors and administrators, during the life of the said A. B., in trust for him and his assigns, with remainder to the use of the said A. B., his heirs and assigns for ever: AND WHEREAS it has been thought advisable by the said Governors to avail themselves of an act of Parliament made and passed in the second year of the reign of his late Majesty King George the Fourth, intituled "An Act to authorize the exchange of lands, tenements, or hereditaments, subject to trusts for charitable purposes, for other lands, tenements, or hereditaments," and, under and by virtue of the powers therein contained, to exchange, in manner hereinafter mentioned, the said pieces or parcels of land, messuages, buildings, and hereditaments, with the appurtenances, of which they are seised as aforesaid, for the piece or parcel of land, messuages, buildings, and hereditaments, intended to be hereinafter given in exchange by the said A. B.: AND WHEREAS the said A. B. is willing and has agreed to make such exchange in manner hereinafter mentioned, and according to the several restrictions, declarations, and provisions in the said act of Parliament contained, so far as the same are applicable to the said intended exchange: AND WHEREAS the said pieces or parcels of land, messuages, buildings, and hereditaments, so proposed to be given and taken in exchange, are all situate in the parish of ——, and the chapelry of ——, in —— aforesaid, and in the diocese of —— (*c*): AND WHEREAS the said Governors did, on or about the —— day of ——, make their application to the said ——, Lord Bishop of ——, by presenting to him their

—of the desire of the charity to make the exchange in pursuance of the act of Parliament;

—of the consent of the other party to make such exchange;

—of the situation of the lands exchanged;

—of the petition by the charity to the bishop of the

(*c*) The object of this recital is to shew what bishop has jurisdiction, under the act, as bishop of the diocese.

OF CHARITY LANDS.

petition under their common seal, (the affixing of which seal was attested by two credible witnesses), and thereby, after stating amongst other things the objects of the said charity, the manner in which the said pieces or parcels of land, messuages, buildings, and hereditaments, to be given in exchange by the said Governors, became vested in them, and that the said Governors were desirous to avail themselves of the said act of Parliament, in order to effect the exchange intended to be effected by these presents; and after stating the reasons for which it was proposed and deemed fit and proper that such exchange should be made, and the benefit to be derived therefrom to the objects of the said charity, prayed that his Lordship would be pleased to authorize such exchange, and that, in order to enable his Lordship to judge of the propriety and expediency of such exchange, his Lordship would be pleased to issue a commission under his episcopal seal, in manner directed by the said act of Parliament, to inquire whether such proposed exchange would be beneficial to the objects of the trust to which the said charity lands, tenements, and hereditaments so proposed to be exchanged were subject, and for what reason or reasons such exchange would be beneficial to the objects of the trust, to which the said charity lands, tenements, and hereditaments, so proposed to be exchanged, were subject, and for what reason or reasons such exchange would be beneficial to the said charity (*d*): AND WHEREAS the said statement in the said petition made, was verified upon oath by the affidavit of ——, duly made and sworn on the —— day of ——, before one of her Majesty's justices of the peace for the said town of ——, which affidavit was annexed to the said petition, and is now lodged in the Registry of the said Diocese of ——, and three months' previous notice was given before the issuing of such commission, of the intention to propose such exchange, by inserting the particulars, extent, and situation, and the tenure of the pieces or parcels of land and other hereditaments respectively proposed to be given and taken in ex-

diocese to authorize the exchange;

—of the verification of the petition;

—of the requisite notices having been given;

(*d*) See the form of the notice, infra, Precedent XXII., p. 292, and the notes thereto.

change, for three successive weeks, that is to say, on [*day of the week*], the —— day of —— last, [*day of the week*], the —— day of —— last, and [*day of the week*], the —— day of —— last, in the newspaper called ——, being a —— newspaper generally circulating in the said town of —— and county of ——; and also by affixing duplicates of the said notice in writing on conspicuous parts of the principal doors, respectively, of the parish church of ——, in the town of —— aforesaid, and of —— chapel, in the said parish of ——, on three successive Sundays, (that is to say, the ——, ——, and —— days of —— last), whereon divine service was performed, and shortly before the commencement of such service on each of the said Sundays in the same church and chapel (*e*): AND WHEREAS the said ——, Lord Bishop of ——, being satisfied that reasonable ground had been laid before him to warrant his issuing a commission, did issue a commission under the episcopal seal of the see of ——, bearing date the —— day of ——, directed to the Rev. A. B., of ——, a beneficed clergyman, being rector of ——, in the county of ——, the Rev. C. D., of ——, a beneficed clergyman, being rector of ——, in the county of ——, E. F., of ——, a barrister at law, of at least five years' standing, and G. H., of ——, authorizing and requiring the said commissioners, or such and so many of them as are by the said act of Parliament required, to inquire into the said proposed exchange, in manner and for the purposes mentioned in the same act (*f*): AND WHEREAS the said A. B., ——, C. D., ——, and E. F., ——, having proceeded to execute the said commission, according to the directions and provisions of the said act, did, by an indenture under their hands and seals, purport-

—of the bishop having issued a commission of inquiry;

—of the return to the commission;

(*e*) See the form of the notice, infra, Precedent XXII., and the note thereto.

(*f*) This commission is directed to issue if the bishop be satisfied with the application and the verification of it, and with the result of such previous inquiries as he may think fit to make; (see the act, sect. 2); and as to the issuing of a new commission if the bishop be dissatisfied with the return of the first, see sect. 3; see, too, infra, Precedent XXIII., p. 293, and the notes thereto.

As to the issuing of the commission.

OF CHARITY LANDS.

ing to be a return to the said commission, and bearing date the —— day of ——, certify to the said ——, Lord Bishop of ——, the several matters made to appear to them, together with the surveys and other evidence laid before them, closed up under their hands and seals, and now deposited with the registrar of the said diocese of ——, and amongst other things did thereby certify, that they the said A. B., C. D., and E. F., having met together on the —— day of ——, did, before proceeding to execute the said commission, severally administer to each other, and personally take, the oath in and by the said act in that behalf prescribed, and did proceed to execute the said commission, and did then view and examine, and make inquiries as to the pieces or parcels of land, messuages, buildings, and hereditaments described in the said commission as to be given and taken in exchange respectively, (being the pieces or parcels of land, messuages, buildings, and hereditaments hereinafter described, and intended to be hereby conveyed in exchange), and did consider all the allegations and causes mentioned in the declaration or statement annexed to the said commission, (being a copy of the declaration or statement annexed to the said petition), and did examine upon oath such persons as they had thought proper to be brought before them, for the purposes of the said commission, and did also require to be laid before them the abstract of title therewith certified, (being the abstract of the title of the said A. B., to the piece or parcel of land and hereditaments intended to be hereby by him given in exchange), and also the title-deeds belonging to the said A. B., and referred to in the said abstract of title, and did cause to be verified on oath the survey, map, or plan therewith certified, of the pieces or parcels of land and hereditaments proposed to be given and taken in exchange respectively, and did cause the said pieces or parcels of land and hereditaments respectively to be valued, but that there were no rights of common or other special rights belonging thereto, and that the proposed exchange would be permanently beneficial to the said charity, for the reasons in the said certificate fully set out, and that the said exchange was proposed for the con-

OF CHARITY LANDS.

venience of the said charity, and not for the convenience of the said A. B., or any other person or persons, body politic or corporate, and that the terms which were proposed were the best which could be obtained for the benefit of the said charity, and also that they had inquired into the title of the hereditaments proposed to be given in exchange for the benefit of the said charity, and that the same was a perfect and sufficient title, as is in the said certificate more fully set forth (*g*): AND WHEREAS the said ——, Lord Bishop of ——, being satisfied, upon the return of the said commission, that the said proposed exchange is proper and beneficial for the said charity, hath determined to signify his consent thereto in the manner prescribed by the said act of Parliament, and hereinafter mentioned: AND WHEREAS it is intended, that these presents, when duly executed by the parties hereto, and attested, shall be enrolled in the High Court of Chancery within six months after the date hereof, and shall be acknowledged by the said A. B. for the purpose of enrolment, and that two parts of these presents shall be prepared and executed, and a memorandum of the enrolment indorsed on each part, and that both parts, after the same shall have been enrolled as aforesaid, shall be produced to the said ——, Lord Bishop of ——, and a transcript of these presents, and of the memorandum of enrolment, shall be entered in the registry of the said diocese, and that the said ——, Lord Bishop of ——, shall thereupon, by writing under his hand, indorsed on each part of these presents, authorize the delivery of possession, according to the terms of these presents, of the hereditaments intended to be hereby conveyed in exchange, and that the delivery of possession to the said Governors of the piece or parcel of land and hereditaments so intended to be hereby conveyed to them in exchange, and the execution of both parts of these presents by the several parties hereto, and the signing of such authority for taking possession, shall be attested by two credible witnesses, and that memorandums of such attestations shall be indorsed on both parts of these pre-

—of the bishop's determination to assent to the exchange;

—of the intention that the subsequent formalities, prescribed by the act, shall be complied with;

(*g*) See infra, Precedent XXIII., p. 293, and the notes thereto.

OF CHARITY LANDS.

sents, and that the attestation of the execution of these presents by the said Governors shall express that both parts of these presents were signed by the said ——, Lord Bishop of ——, before the execution thereof by the said Governors, and that a transcript of the authority for delivery of possession, and of such several attestations as aforesaid, shall be entered in the registry of the said diocese, and that one part of these presents shall remain with the said Governors for the benefit of the said charity, and the other part shall be delivered to the said A. B., pursuant to the directions in that behalf in the said act of Parliament expressed and contained (*h*): NOW THIS INDENTURE WITNESSETH, that, for effectuating the said exchange, and in consideration of the bargain and sale, and conveyance in exchange hereinafter contained, by and on the part of the said A. B., and C. D., and also in consideration of the sum of five shillings to the said Governors paid by the said A. B., at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), they the said Governors of &c., [*the full title of the corporation*], under and by force and virtue, and in exercise and execution of the power and authority to them given in and by the said act of Parliament, made and passed in the second year of the reign of his said late Majesty King George the Fourth, with the approbation of the said ——, Lord Bishop of ——, signified by his signing and sealing with his episcopal seal both parts of these presents, in the presence of the two credible persons whose names are, or are intended to be, respectively indorsed upon both parts of these presents, as attesting witnesses to the execution of both the said parts by the said ——, Lord Bishop of ——, before the execution thereof respectively by the said

Witnesseth. Bargain and sale by the charity.

Inutility of the recital in the text.

(*h*) It is apprehended that the whole of this recital, which merely indicates the formalities required by the act and intended to be observed, may be dispensed with, as it can serve no other purpose than to guide the solicitor in the execution of his duty,—a purpose which may be quite as effectually answered by a note at the end of the draft, or even by a reference to the 4th section of the statute.

OF CHARITY LANDS.

Governors (*i*), have granted, bargained, sold, and conveyed, and do by this present deed of bargain and sale, in two parts or duplicates, both of them under the common seal of the said Governors, such seal being affixed in the presence of the two credible persons whose names are, or are intended to be, upon both parts of these presents respectively indorsed, as attesting witnesses to the execution of both the said parts by the said Governors (*k*), grant, bargain, sell, and convey, unto the said A. B. and his heirs, ALL THAT &c., [*parcels—general words*]: TO HAVE AND TO HOLD the said pieces or parcels of land and hereditaments, and all and singular other the premises hereinbefore bargained and sold, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns for ever, in lieu of and in exchange for the piece or parcel of land and other hereditaments hereinafter by the said A. B. and C. D. granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, unto the said Governors and their successors: AND THE SAID GOVERNORS of &c. [*full title*] do hereby, for themselves and their successors, covenant with the said A. B., his heirs and assigns, by these presents, in manner following; (that is to say), THAT, for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said Governors, or any of their predecessors, made, done, committed, executed, or knowingly or willingly suffered to the contrary, they the said Governors, at the time of the sealing and delivering of these presents, are lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to, the said pieces or parcels of land and other hereditaments and premises hereinbefore granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, and every part thereof, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, property,

Parcels.

Habendum.

Covenants by the charity

—for title.

(*i*) The bishop's approbation is to be signified in this manner. (See the 4th section of the act).

(*k*) This is required by the 4th section.

OF CHARITY LANDS.

power of revocation, equity of redemption, remainder, or limitation of any use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same: AND THAT, for and notwithstanding any such act, deed, matter, or thing whatsoever as aforesaid, they the said Governors now have in themselves good right, full power, and lawful and absolute authority to grant, bargain, sell, and convey in exchange the said pieces or parcels of land and other hereditaments and premises hereinbefore granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents: AND THAT it shall be lawful for the said A. B., his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said pieces or parcels of land and other hereditaments and premises hereinbefore granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by them the said Governors or their successors, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them or their predecessors: AND THAT (*l*) free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged or otherwise, by the said Governors and their successors, well and sufficiently saved, defended, kept harm-

—for right to convey;

—for quiet enjoyment;

—free from incumbrances

Form of the conveyance by the charity.

(*l*) The 1st section enables a charity to convey in exchange "to any person or persons, body politic or corporate, and to his, her, or their heirs, successors, or assigns, *or otherwise, as he, she, or they shall direct or appoint;*" but the 4th section empowers the charity to convey "to the person or persons, bodies politic or corporate, to whom the same shall be directed to be conveyed." The employment, too, of a bargain and sale enrolled precludes the declaration of any uses, as the use vests immediately in the bargainee.

less, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, estates, titles, troubles, charges, debts, and incumbrances whatsoever, already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered, by the said Governors or their successors, or any of them, or by any person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for them or their predecessors: AND FURTHER, THAT they the said Governors shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges in the law of the said A. B., his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, bargains, sales, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely conveying in exchange the said pieces or parcels of land, hereditaments, and premises, hereinbefore by them the said Governors granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns, as by the said A. B., his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required: AND THIS INDENTURE ALSO WITNESSETH, that, for effectuating the said exchange, and in consideration of the bargain and sale, and conveyance in exchange hereinbefore contained, by and on the part of the said Governors, and in consideration of the sum of five shillings apiece, at or immediately before the sealing and delivery of these presents to the said A. B. and C. D. paid by the said Governors, (the receipt whereof is hereby acknowledged), he the said C. D., at the request and by the direction of the said A. B., (testified by his being a party to and executing these presents), hath bargained, sold, and conveyed, and doth by this present deed of bargain and sale, in two parts or duplicates, both of them sealed and delivered by the said C. D., in the presence of the two credible persons whose names are, or are intended to be, upon both parts of these presents respectively in-

OF CHARITY LANDS.

—and for further assurance;

Witnesseth further,— Bargain and sale to the charity.

OF CHARITY LANDS.

dorsed, as attesting witnesses to the execution of both the said parts by the said C. D. (*m*), bargain, sell, and convey, and the said A. B. hath granted, bargained, sold, and conveyed, and doth by this present deed of bargain and sale, in two parts or duplicates, both of them sealed and delivered by the said A. B., in the presence of the two credible persons whose names are, or are intended to be, upon both parts of these premises, respectively, indorsed as attesting witnesses to the execution of both the said parts by the said A. B. (*m*), grant, bargain, sell, and convey unto the said Governors of &c., [*full title*], and their successors,

Parcels.

ALL THAT &c. [*parcels—general words*]: TO HAVE AND

Habendum.

TO HOLD the said piece or parcel of land, messuages, buildings, and hereditaments, and all and singular other the premises lastly hereinbefore bargained, sold, and conveyed in exchange, or expressed and intended so to be, unto and to the use of the said Governors of &c., [*full title*], and their successors for ever, in lieu of and in exchange for the said pieces or parcels of land and other hereditaments and premises hereinbefore by the said Governors granted, bargained, sold, and conveyed in exchange, or expressed and intended so to be, unto and to the use of the said A. B., his heirs and assigns:

Covenants for title with the charity.

AND THE SAID C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said Governors of &c., [*full title*], their successors and assigns, that &c. [*covenant by C. D. against incumbrances, as to* "the hereditaments and premises lastly hereinbefore bargained, sold, and conveyed in exchange," *ante, Vol. 3, p. 249*]: AND THE SAID A. B. doth &c., [*covenants for right to convey—for quiet enjoyment—free from incumbrances—for further assurance, supra, p. 282*]:

In witness, &c.

IN WITNESS whereof, the said Governors of &c. [*full title*] have hereunto, and also to the other part or duplicate hereof, of the same tenor and date with these presents, set their common seal, and the said several other parties hereto have hereunto, and also to such other part or duplicate hereof as aforesaid, set their hands and seals, the day and year first above written (*m*).

(*m*) See the 4th section.

MEMORANDA AND INDORSEMENTS (*n*).

MEMORANDUM *on the Margin of each Part or Duplicate.*

Memorandum of acknowledgment.

THIS Deed, and another part or duplicate thereof, similarly attested by me, were severally acknowledged for the purpose of enrolment by A. B., one of the grantors therein named, this —— day of —— (*o*).

Before me,

[*Signature of a Master Extraordinary in Chancery*].

INDORSEMENTS *on each Part or Duplicate.*

Attestation of execution by the exchanging party.

THE within-written Deed, and another part or duplicate thereof, similarly attested by us, were severally signed, sealed, and delivered by the within-named A. B. and C. D., in our presence, [*signatures and addresses of two witnesses*].

Attestation of execution by the bishop.

THE within-written Deed, and another part or duplicate thereof, were severally signed by the within-named ——, Lord Bishop of ——, and sealed with his episcopal seal in our presence, before the execution thereof, or of either of them, by the within-named Governors of &c., [*full title*], [*signatures and addresses of two witnesses*].

Attestation of execution by the bishop.

THE within-written Deed, and another part or duplicate thereof, were severally sealed with the common seal of the

(*n*) The following memoranda and indorsements are prescribed by the 4th section of the statute.

(*o*) There must be a similar memorandum of the acknowledgment by C. D.

OF CHARITY LANDS.

Governors of &c., [*full title*], in the presence of us, both parts thereof having been previously signed by the within-named ——, Lord Bishop of ——, [*signatures and addresses of two witnesses*].

Authority for delivery of possession.

MEMORANDUM that the within-written Deed, and a duplicate thereof, having been respectively duly enrolled in the High Court of Chancery, as appears by the memorandum of enrolment indorsed on each part thereof now respectively produced to me, and a transcript of the said deed and of the memorandum of enrolment having been entered in the registry of my diocese, I, the within-named ——, Lord Bishop of ——, do hereby authorize the delivery of possession, according to the terms of the within-written deed, to the within-named A. B., of the pieces or parcels of land and hereditaments before belonging to the within-mentioned Governors of &c., [*full title*], and by the within-written deed conveyed in exchange to the said A. B., and the delivery of possession to the within-named Governors of &c. [*full title*] of the piece or parcel of land, messuages or tenements, and hereditaments, by the within-written deed conveyed to them in exchange: IN WITNESS whereof I have hereunto, and also to a similar writing indorsed on the other part or duplicate of the within-written deed, set my hand, this —— day of ——, in the year of our Lord ——, [*Bishop's signature*].

Attestation of the authority.

WITNESSES to the signing by the said ——, Lord Bishop of ——, of the foregoing memorandum and of a duplicate thereof similarly attested by us, indorsed on the other part or duplicate of the within-written deed, [*signatures and addresses of two witnesses*].

Memorandum of delivery of possession.

MEMORANDUM, that possession of the piece or parcel of land, messuages or tenements, and hereditaments in the within-written indenture mentioned to be conveyed in exchange to the within-named Governors of &c., [*full*

title], has this day been delivered to them in our presence, and that possession of the pieces or parcels of land, messuages or tenements, and other hereditaments in the within-written indenture mentioned to be conveyed in exchange to the within-named A. B., has also this day been delivered to him in our presence. IN WITNESS whereof, we have hereunto, and to a similar memorandum indorsed on the duplicate of the within-written deed, set our hands, this —— day of ——, [*signatures and addresses of two witnesses*]. OF HABITY LANDS.

ENROLLED in her Majesty's High Court of Chancery, the —— day of ——, in the year of our Lord ——, being first duly stamped, according to the tenor of the statutes made for that purpose, [*signature of registrar*]. Memorandum of enrolment in Chancery.

ON the —— day of ——, a transcript of this deed, with the several attestations of its execution, and the memorandum of the enrolment thereof in the High Court of Chancery, was entered in the registry of the diocese of ——, [*signature of the registrar of the diocese*]. Memorandum of the entry of a transcript of the deed in the registry of the bishop.

ON the —— day of ——, a transcript of the authority for delivery of possession indorsed hereon, and also of the memorandum of delivery of such possession, was entered in the registry of the diocese of ——, [*signature of the registrar of the diocese*]. Memorandum of the entry in the registry of the bishop of the authority to deliver possession, and of the memorandum of delivery.

XXI.

PETITION FOR CHARITY EXCHANGE.

PETITION *by a* CHARITY *to the* BISHOP *of the Diocese, praying for a* COMMISSION *to inquire into a proposed* EXCHANGE *under the Act of the* 1 *&* 2 *Geo.* 4, *c.* 92 (*a*).

TO THE RIGHT REV. FATHER IN GOD, ——, LORD BISHOP OF ——.

Petition.

THE HUMBLE PETITION of the Governors of &c. [*full title of the charity*] sheweth—

Statement of creation and objects of charity;

THAT his late Majesty King ——, by his letters patent, bearing date ——, willed and granted that &c. [*statement of the letters patent, so far as to shew the incorporation, the grant of lands, and the objects of the charity* (*b*).

As to the application to the bishop of the diocese to authorize an exchange of charity lands.

(*a*) The 2nd section of the statute referred to in this and the last Precedent requires, as a preliminary to any exchange of charity lands, that an application shall be made by the trustees to the bishop of the diocese in which the charity lands proposed to be given in exchange are situate, stating the objects of the charity, the manner in which the lands have become vested in the trustees, the reason for which it is fit and proper that such exchange shall be made, and the benefit to be derived for the objects of the charity by means of such exchange. The statement is to be verified on oath, and the bishop, after making such preliminary inquiries as he may choose, and being satisfied with the result, is to issue a commission to inquire whether, and for what reasons, the proposed exchange will be beneficial to the charity. The Precedent in the text is of such an application, and is framed with a regard to the requisites prescribed by the act. If the charity be not a corporation, the 6th section of the statute, and in some cases the 7th and 8th, must be consulted. (See supra, p. 274, n. (*b*)).

(*b*) This and the two following recitals might be more compendiously embraced in one, as supra, p. 274, retaining however the full description of the lands. But as the bishop may expect to see a

PETITION FOR CHARITY EXCHANGE.

THAT, under and by virtue of several orders and decrees made by the High Court of Chancery, in a cause in which the Attorney-General, at the relation of your petitioners, was informant, and your petitioners were plaintiffs, and the Right Rev. Father in God, ——, then Lord Bishop of ——, (in which diocese [*the locus of the charity*] was then situate), and —— were defendants, and of an act of Parliament made and passed in the —— year of the reign of his late Majesty King ——, intituled "An act" &c., [*the title of the act*], and under and by virtue of several other orders and decrees of the said Court of Chancery, made in the said causes, and in the matter of the said act of Parliament, on the petition of your petitioners, according to the provisions of the said last-mentioned act, and under and by virtue of another act of Parliament made and passed in the —— year of the reign of her present Majesty, to alter some of the provisions of the said first-mentioned act, and to provide in a different manner for some of the objects of the said first-mentioned act, the said charity is now conducted and established according to a scheme settled and approved of by the said High Court of Chancery, and confirmed by the said first-mentioned act of Parliament, and the objects of the said charity have been extended to embrace, [*brief mention of new objects as stated in the acts*], according to the regulations and provisions in the said acts of Parliament contained.

—of Chancery proceedings, and acts of Parliament affecting the objects of the charity;

THAT, under and by virtue of the said letters patent, your petitioners are now seised and entitled for an estate of inheritance in fee-simple, of and to a piece or parcel of land, situate in the parish of ——, and in the chapelry of ——, in —— aforesaid, (being part of the lands by the said letters patent granted to the said governors as aforesaid), on which said piece or parcel of land, divers mes-

—of the seisin by the charity of the lands to be given in exchange;

pretty full description of the creation and objects of the charity, and how the land became vested in the trustees, it will be better in most cases to retain the form in the text.

PETITION FOR CHARITY EXCHANGE.

suages, erections, and buildings have been erected and are now standing, and which said piece or parcel of land is bounded &c., and which said piece of land, hereinbefore described, contains in the whole —— square yards or thereabouts, and is delineated in the plan drawn in the margin of this petition, and therein coloured ——, and marked with the letter ——.

—and of adjacent lands;

THAT your petitioners are also seised and entitled to other lands and buildings, adjacent to the piece or parcel of land hereinbefore described.

—that an exchange has been thought advisable;

THAT it has been thought advisable by your petitioners to exchange the said piece of land hereinbefore described, for a piece or parcel of land belonging to A. B., of &c., [*similar description to that above given of the other land*].

—that the petitioners desire to avail themselves of the act of Parliament;

THAT your petitioners are desirous to avail themselves of an act of Parliament made and passed in the second year of the reign of his late Majesty King George the Fourth, intituled "An Act to authorize the exchange of lands, tenements, or hereditaments, subject to trusts for charitable purposes, for other lands, tenements, or hereditaments," in order to effect the said exchange hereinbefore mentioned to have been proposed.

—of the reasons for the exchange;

THAT it is fit and proper that the said exchange should be made for the following reasons: viz. 1st. Because the possession by your petitioners of the said piece of land marked ——, [*the land to be taken in exchange*], will enable your petitioners to obtain convenient access to other lands and buildings belonging to your petitioners, which at present are of small value to your petitioners by reason of such want of access; 2ndly. Because such exchange is necessary or desirable for the purposes of enabling your

PETITION FOR CHARITY EXCHANGE.

petitioners to effect certain improvements in and about certain adjacent lands and buildings belonging to your petitioners, and which improvements your petitioners are advised and believe will be highly conducive to the welfare of the said charity.

—of the benefit to the objects of the charity;

THAT the benefit to be derived to the objects of the said charity by means of the said proposed exchange is, that by means of such more convenient access and improvements as aforesaid being obtained and effected consequent on the said proposed exchange, the adjacent lands and buildings belonging to the said charity will be greatly augmented in value, and the revenue arising therefrom be greatly increased.

—that the statement has been verified by affidavit.

THAT the statement hereinbefore made has been verified on oath by the affidavit of ——, duly made and sworn on the —— day of ——, before ——, one of her Majesty's justices of the peace for the said town of ——, and which affidavit is hereunto annexed (*c*).

Prayer to authorize the exchange;

—and to issue a commission of inquiry.

YOUR PETITIONERS THEREFORE HUMBLY PRAY YOUR LORDSHIP, THAT your Lordship will be pleased to authorize the said proposed exchange; AND THAT, in order to enable your Lordship to judge of the propriety and expediency of such exchange, your Lordship will be pleased to issue a commission under your episcopal seal, in manner directed by the said last-mentioned act of Parliament, to inquire whether such proposed exchange will be beneficial to the objects of the trust to which the said charity lands (*d*), tene-

(*c*) See section 2 of the act 1 & 2 Geo. 4, c. 92.

(*d*) Although the act prescribes the statements to be contained in the application, it does not prescribe the object of the application specifically; but the petition in the text seems appropriate.

PETITION FOR CHARITY EXCHANGE.

ments, and hereditaments so proposed to be exchanged are subject, and for what reason or reasons such exchange will be beneficial to the said charity.

AND YOUR PETITIONERS &c. (*e*).

(*e*) If the charity be a corporation, the common seal must be affixed to the petition; if otherwise, the petition must be signed by the requisite number of trustees. (See sect. 6 of the act; and also sects. 7 and 8; and supra, p. 274, n. (*b*)).

XXII.

NOTICE OF EXCHANGE OF CHARITY LANDS.

FORM *of* NOTICE *of proposed* EXCHANGE *of* CHARITY *Lands* (*a*).

[*Name of the Charity*] (*b*).

NOTICE is hereby given, that it is intended to propose an exchange between the Governors of &c., [*the full title of the corporation of the charity*], and A. B., of &c., of the freehold lands, tenements, and hereditaments hereinafter mentioned; (that is to say), ALL THAT piece or parcel of land, with the messuages, tenements, erections, and

As to the notice preliminary to an exchange of charity lands.

(*a*) This notice must be inserted for three successive weeks in some one and the same newspaper, generally circulating in the part of the country where the lands, tenements, or hereditaments proposed to be exchanged shall be situated, and must be affixed (in writing) on a conspicuous part on the door of the church or chapel of each parish or chapelry wherein the lands to be respectively given and taken in exchange are situated, on three successive Sundays whereon divine service shall be performed, and shortly before the commencement of such service in such church or chapel. The last of such Sundays, and the last day of such insertion in the newspaper, must be made three months before the bishop's commission issues. (See the Act 1 & 2 Geo. 4, c. 92, s. 5).

(*b*) The popular or generally known name of the charity will, perhaps, be better used here than the full technical name.

buildings thereon erected and now standing, bounded &c., which said piece of land hereinbefore described is now in the occupation of ——, contains —— square yards or thereabouts, and is situate in the parish of ——, and the chapelry of ——, in —— aforesaid: To BE GIVEN by the said Governors, and TAKEN by the said A. B., IN EXCHANGE for ALL THAT piece or parcel of land, with the messuages, tenements, buildings, and erections, thereon erected and now standing, bounded &c., which said piece of land lastly hereinbefore described is now in the occupation of ——, contains —— square yards or thereabouts, is situate in the said parish of ——, and chapelry of ——, and is TO BE GIVEN by the said A. B. and TAKEN by the said Governors, IN EXCHANGE for the piece or parcel of land, tenements, and hereditaments firstly hereinbefore described (*c*).

NOTICE OF EXCHANGE OF CHARITY LANDS.

(*c*) The notice, it is apprehended, should be signed by the secretary, or some other recognised officer of the charity.

XXIII.

REPORT *of a* COMMISSION *to Inquire into a proposed* EXCHANGE *of* CHARITY *Lands* (*a*).

REPORT OF COMMISSIONERS IN A CHARITY EXCHANGE.

IN THE MATTER of a proposed exchange of land between the Governors of &c., [*the full title of the Charity*], and A. B., of &c.

TO THE RIGHT REV. FATHER IN GOD, ——, LORD BISHOP OF ——.

WE, E. F., Clerk, a beneficed clergyman, being rector of ——, in the county of ——; G. H., of ——, a barrister

Statement of commissioners.

(*a*) With respect to the issuing of the commission, and of whom

As to the com-

REPORT OF COMMISSIONERS IN A CHARITY EXCHANGE.

at law, of at least five years' standing; and I. K., of ——; being three of the commissioners (*b*) named in and authorized by a commission issued by your Lordship, under your Lordship's episcopal seal, and bearing date the —— day of ——, in the year of our Lord 18—, and directed to us the said E. F., G. H., and I. K., along with the Rev. L. M., a beneficed clergyman, being rector of ——, in the county of ——, having proceeded to execute such commission, Do HUMBLY CERTIFY to your Lordship, that we the said E. F., G. H., and I. K., met together on [*the day of the week*], the —— day of —— last past, at ——, and did, before proceeding to execute the said commission, severally administer to each other, and personally take the oath prescribed in and by a certain act of Parliament, made and passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth, intituled "An Act to authorize the exchange of lands, tenements, or hereditaments subject to trusts for charitable purposes, for other lands, tenements, or hereditaments," for commissioners to take before they proceed to execute such commission, and which oaths, so as aforesaid administered, are those specified in the first schedule hereunder written (*c*): AND WE DO FURTHER humbly certify, that, after taking the said oath, we did proceed to execute the said commission, and did view, examine, and make inquiry as to the property described in the said commission to be given, and also that to be taken in exchange, and did consider all the allegations and circumstances mentioned in the declaration or statement annexed to the said commission and therein referred to, and we have examined on oath such persons as we have thought proper to be brought before us for

Certificate of the meeting and swearing of the commissioners.

Certificate of the execution of the commission.

---

mission and the return to it in case of a proposed exchange of charity lands.

it must consist, and of the powers and duties of the commissioners, see the statute 1 & 2 Geo. 4, c. 92, s. 2. The requisites prescribed by the statute are, it is believed, adhered to in the precedent of the return. No precedent of the commission is given, as that instrument, it is presumed, proceeds from the bishop.

(*b*) Of course there is no reason why all four commissioners should not act, and it would be more satisfactory if all four were to act.

(*c*) See the form of the oath, sect. 3 of the act.

REPORT OF COMMISSIONERS IN A CHARITY EXCHANGE.

the purposes of the said commission, and whose depositions are specified in the second schedule hereunder written, and we have caused to be laid before us the abstract of title, specified in the third schedule hereunder written, (being an abstract of the title of A. B., of &c.), to the piece or parcel of land in the said commission described, and intended to be given in exchange by the said A. B., and also the title-deeds belonging to the said A. B., and referred to in the said abstract of title, and we have caused to be verified on oath the survey map or plan (*d*) of the pieces or parcels of land proposed to be respectively given and taken in exchange, which is specified in the fourth schedule hereunder written, and we have caused the said pieces or parcels of land and hereditaments respectively to be valued, but there were no rights of common, or other special rights belonging thereto (*e*), by which view, examination, inquiry, consideration, investigation, and valuation, we have clearly ascertained, AND WE DO HUMBLY CERTIFY, that the proposed exchange will be permanently beneficial to the charity in the said commission mentioned, for the following reasons, (that is to say), [*statement of the reasons*] (*f*): AND WE DO FURTHER HUMBLY CERTIFY, that the said exchange is proposed for the convenience of the said charity, and that the terms which are proposed are the best which can reasonably be obtained for the benefit of the said charity: AND WE DO FURTHER HUMBLY CERTIFY, that we have inquired into the title of the pieces or parcels of land and hereditaments proposed to be given in ex-

Certificate that the exchange will be beneficial to the charity.

Certificate of further particulars.

Certificate as to the title of the lands to be taken by the charity.

(*d*) Unless the lands to be given and taken in exchange are adjacent, there will probably be two survey maps or plans.

As to the valuation by the commissioners.

(*e*) The act (sect. 2) directs the commissioners to cause a valuation to be made of the lands, tenements, and hereditaments to be respectively given and taken in exchange, and the timber and trees on such lands respectively, and the rights of common, and all other rights belonging thereto. In the case in the text, the properties being situate in a town, there were no timber or trees on either of them.

(*f*) See the mode of stating the reasons in the precedent of the petition to the bishop, supra, p. 290.

REPORT OF COMMISSIONERS IN A CHARITY EXCHANGE.

change for the benefit of the said charity, and that the same is a perfect and sufficient title: AND WE DO FURTHER HUMBLY CERTIFY the several oaths, dispositions, abstracts of title, survey map or plan, and other evidence laid before us, and which are respectively specified in the said four schedules hereunder written, and are intended to be closed up with this our report under our hands and seals, to be deposited with the registrar of your Lordship's diocese. IN WITNESS whereof, we have hereunto set our hands and seals, the —— day of ——, 18—.

Further certificate as to evidence.

In witness, &c.

THE FIRST SCHEDULE hereinbefore referred to, containing—

1st. The oath taken by the above-named A. B.

2nd. The oath taken by the above-named C. D.

3rd. The oath taken by the above-named E. F.

THE SECOND SCHEDULE hereinbefore referred to, containing—

The depositions taken by the said commissioners.

THE THIRD SCHEDULE hereinbefore referred to, containing—

The abstract of the title of A. B. to the piece or parcel of ground, situate &c., proposed to be given in exchange to the said charity.

THE FOURTH SCHEDULE,

The map or plan (*g*) of the piece or parcel of land &c., situate &c., proposed to be given in exchange by the said charity, and of the piece or parcel of land &c., situate &c., proposed to be taken in exchange by the said charity.

(*g*) See supra, p. 295, n. (*d*).

XXIV.

EXCHANGE *by a* RECTOR *of his* PARSONAGE HOUSE *and* GLEBE *for other Lands to become Glebe, pursuant to the Statutes* 55 *Geo.* 3, *c.* 147, *&* 6 *Geo.* 4, *c.* 8 (*a*).

OF GLEBE.

THIS INDENTURE, made &c. BETWEEN the Rev. A. B., Clerk, rector of ——, in the county of ——, and in the diocese of ——, of the first part; the Right Rev. ——, Lord Bishop of ——, patron and ordinary of the said rectory (*b*), of the second part; and D. E., of &c., of the third part: WHEREAS the said A. B., as such rector as aforesaid, is seised to him and his successors of and in the parsonage-house of the said rectory of ——, with the coach-house, stable, garden, and pleasure grounds thereto belonging, and other glebe lands of the said rectory hereinafter expressed to be conveyed by him in exchange to the said D. E.: AND WHEREAS D. E., late of &c., deceased, duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby, after directing the payment of his just debts and

Parties.

Recital of the rector's seisin of the glebe;

—of the will of a testator, devising the lands to be taken in exchange to a tenant for life,

(*a*) In preparing drafts of exchanges under this act, the statutes referred to must, of course, be carefully consulted. The first statute is the one of most consequence; the second extends the powers of the first to any quantity of lands, the number of acres having been limited by the first. The acts embrace all lands of freehold tenure, and copyholds of inheritance, and for lives. The exchange must be made by deed indented and registered in the bishop's court; but a bargain and sale enrolled is not required. The formalities required are less numerous than those prescribed in the exchange of charity lands. (Supra, Precedent XX., p. 273; see, also, the statute 56 Geo. 3, c. 52; and infra, p. 305, n. (*o*)).

As to exchanges under the statutes 55 Geo. 3, c. 147; 6 Geo. 4, c. 8.

(*b*) The consent of both patron and ordinary is necessary; (see the act 55 Geo. 3, c. 147, s. 1); in this case it will be seen they are the same person.

Covenant of patron and ordinary.

OF GLEBE.

with remainders over;

funeral expenses and legacies, gave and devised all his freehold and copyhold messuages, lands, tenements, tithes, and hereditaments, in the county of ——, (including the fields, cottages, gardens, and grounds intended to be hereinafter conveyed in exchange by the said D. E., party hereto), unto his beloved wife F. E., (since deceased), and her assigns for her life, without impeachment of waste, with remainder to G. H. and I. K. and their heirs during the life of his said wife, in trust for her and her assigns, and to preserve contingent remainders, with remainder to the said D. E., party hereto, (then D. M.), for his life, without impeachment of waste, with divers remainders over: AND THE SAID testator did thereby will and direct, that when the person or persons to whom any estate for life or in tail was thereby given should come to the possession of the same, such person or persons should from thenceforth take upon him or them, and use upon all occasions, the name of E. alone, exclusive of other surnames, and should use their utmost endeavours by all proper means and methods to obtain an act of Parliament for changing their names to E., and for liberty to use the same arms as had been anciently used in the family of the E.'s: AND WHEREAS the said testator died in or about the month of January, 1802, without having revoked or altered his said will as to the devise of the said estates hereinbefore mentioned: AND WHEREAS, under and by virtue of an act of Parliament made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, the said D. E., party hereto, (then D. M.), took and hath since used the name and arms of E. only, in compliance with the direction in that behalf contained in the hereinbefore recited will: AND WHEREAS the said A. B. and D. E. have mutually agreed to effectuate an exchange between them of the several messuages, lands, and other hereditaments hereinafter particularly mentioned, in pursuance and under and by virtue of the powers, provisoes, and declarations of a certain act of Parliament made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act for enabling spiritual persons to exchange the parsonage or glebe-houses, or glebe-lands,

—with a direction that the devisees should take the name and arms of the testator;

—of the death of the testator;

—of an act of Parliament authorizing the devisee to take the name and arms of the testator;

—of agreement for exchange;

OF GLEBE.

belonging to their benefices, for others of greater value, or more conveniently situated for their residence and occupation, and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe-houses and glebe-lands, and for purchasing and annexing lands to become glebe in certain cases, and for other purposes;" and of another act of Parliament made and passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend and render more effectual an act passed in the fifty-fifth year of his late Majesty King George the Third, for enabling spiritual persons to exchange their parsonage-houses or glebe-lands, and for other purposes therein mentioned:" AND WHEREAS three months' previous notice of such exchange, describing the particulars, extent, and situation of the premises respectively to be given and taken in exchange, hath been duly given by the insertion of such notice for three successive weeks, (that is to say), the ——, ——, and —— days of ——, respectively, now last past, in the newspaper called ——, being a weekly newspaper of and in general circulation in the said county of ——, wherein the premises so to be given and taken in exchange are respectively situate, and also by affixing such notice in writing on a conspicuous part of the door of the parish church of —— aforesaid, in which parish the messuages, lands, and hereditaments hereinafter particularly mentioned, and intended to be hereby exchanged, are respectively situate, on three Sundays successively, (that is to say), the ——, ——, and —— days of ——, respectively, now last past, whereon divine service was performed, and shortly before the commencement of such service on each of the said Sundays in such church (*c*): AND WHEREAS a map under an actual survey of the said parsonage-house and offices, barns, stables, out-buildings, garden, and ground, and other glebe-lands intended to be given in exchange by the said A. B., and also of the said fields, cottages, gardens, and ground intended to be taken in exchange for the same, together

—of the due notice having been given;

—of proper maps and surveys having been made and verified;

(*c*) As to the notice required, see the act 55 Geo. 3, c. 147, s. 14; and as to the form of the notice, see supra, Precedent XXII., p. 292. Notice.

OF GLEBE.

with a valuation of the said respective hereditaments and premises, have been duly made by Mr. ——, a competent surveyor, approved of by the said patron and ordinary, and incumbent of the said rectory, and verified on oath by the said surveyor, which oath was administered at ——, in the county of ——, on the —— day of ——, by ——, Esq., one of her Majesty's justices of the peace for the said county of —— (*d*): AND WHEREAS the said ——, Lord Bishop of ——, having previously received the said map and valuation, by a certain instrument under his hand and episcopal seal, purporting to be a commission of inquiry, bearing date the —— day of ——, directed to seven persons therein named, and such as are for that purpose required in and by the said act of Parliament of the fifty-fifth year of the reign of his Majesty King George the Third, did authorize and commission them to inspect, examine, and make inquiry as to the respective premises proposed to be given and received in exchange as aforesaid, and after such inspection and examination to certify to the said ——, Lord Bishop of ——, whether the proposed exchange was in their judgment fit and proper to be made, and whether it would promote the permanent advantage or convenience of the said A. B. and his successors (*e*): AND WHEREAS —— of the said commissioners named in the said commission of inquiry, (and such as are by the last-mentioned act in that behalf required), by a certain instrument under their hands, bearing date the —— day of ——, and which instrument is indorsed upon the said commission of inquiry, certified to the said ——, Lord Bishop of ——, that the proposed exchange was in their judgment fit and proper to be made, and would promote the convenience of the said A. B. and his successors (*f*):

—of the bishop of the diocese having issued a commission to inquire into the exchange;

—of the return to the commission, approving of the exchange;

(*d*) See the statute 55 Geo. 3, c. 147, s. 15.

Bishop's commission of inquiry.

(*e*) As to the bishop's commission of inquiry, see the statute 55 Geo. 3, c. 147, s. 16. The statute does not seem to require a formal application to the bishop, as in an exchange of charity lands; *supra*, Precedent XXI., p. 288.

Return to the commission.

(*f*) As to the return to the commission, see the statute 55 Geo. 3,

OF GLEBE.

AND WHEREAS it is intended that these presents, when duly executed by the parties hereto, and attested, together with the said map, valuation, commission of inquiry, and return, shall be deposited in the office of the registrar of the said diocese of ——, for perpetual preservation, and that a certificate of such deposit shall be signed by such registrar, on a duplicate on one part of these presents, or on some separate instrument, pursuant to the directions for that purpose expressed in that behalf, in and by the said act of Parliament of the fifty-fifth year of the reign of his said late Majesty King George the Third (*g*): NOW THIS INDENTURE WITNESSETH, that, for effectuating the said exchange, and in consideration of the grant and conveyance in exchange hereinafter expressed to be made by the said D. E., the said A. B. (under and by virtue of the power and authority to him given in and by the said acts of Parliament, of the fifty-fifth year of the reign of King George the Third, and the sixth year of the reign of King George the Fourth, or one of them, and with the consent of the said ——, Lord Bishop of ——, as patron and ordinary of the said rectory, signified by his being a party to and signing and sealing these presents before the execution thereof by the said A. B., and in the presence of two credible persons whose names are intended to be hereupon indorsed as witnessing the signing and sealing hereof by the said ——, Lord Bishop of ——, in the manner aforesaid, as appears by the attestation thereof hereupon indorsed (*h*)) hath granted and conveyed in exchange, and by these presents (being a deed indented and intended to be registered as aforesaid) doth grant and convey in exchange unto the said D. E. and his heirs, ALL THAT parsonage-house (*i*),

—of the intention to fulfil the subsequent requisitions of the act of Parliament.

Witnesseth, conveyance by the rector.

Parcels given in exchange by the rector.

c. 147, s. 16; and see the form of such a return in a similar case supra, Precedent XXIII., p. 293.

(*g*) See supra, p. 280, n. (*h*).

(*h*) See the statute 55 Geo. 3, c. 147, s. 10.

(*i*) In the case in the text the incumbent gives his parsonage-house, without taking another house in exchange which may become the parsonage-house; and there may be a question whether the acts

Validity of an exchange where a parsonage-

OF GLEBE. coach-house, stable, garden, and pleasure ground, containing by estimation ——, and also all that garden, containing &c., and also all that meadow, containing &c., which said pieces contain in the whole ——, or thereabouts, together with the timber growing thereon, and now in the tenure or occupation of the said A. B., as such rector as aforesaid, as the same are more particularly described in the map or plan drawn in the margin of these presents, which said map or plan is copied from the map made and

General words. verified as hereinbefore is mentioned: AND ALL quarries, furzes, trees, underwoods, coppices, and the ground and soil thereof, mounds, fences, hedges, ditches, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever, to the said parsonage-house, glebe-land, hereditaments, and premises, belonging or in anywise appertaining, or with the same, or any of them, demised, leased, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member of them, or any part of them, or appurtenant thereto, with their and every of their appurtenances, AND THE REVERSION and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the hereditaments and premises hereinbefore expressed to be conveyed in exchange, AND ALL THE ESTATE, right, title, interest, inheritance, reversion, use, trust, possession, property, claim, or demand whatsoever, both at law and in equity, of him the said A. B. as such rector as aforesaid, of, in, and

Habendum. to the same premises, and every part and parcel thereof: TO HAVE AND TO HOLD the said parsonage-house, coach-house, stables, barns, garden, pieces or parcels, hereditaments, and all and singular other the premises hereinbefore expressed to be hereby granted and conveyed in exchange unto the said D. E. and his heirs, IN LIEU OF AND IN EXCHANGE for the fields and hereditaments hereinafter expressed to be

---

house is given, and no house taken. authorize such an exchange. They do not expressly enact that if the incumbent parts with his parsonage-house, he shall get another in exchange, but the 1st section of the 55 Geo. 3, c. 147, seems to imply such an intention.

granted and conveyed in exchange by the said D. E. unto the said A. B. and his successors, NEVERTHELESS, to, for, and under the same uses, estates, trusts, and limitations, subject to the same powers, conditions, charges, and incumbrances, as the said last-mentioned fields and hereditaments were settled upon and subject to before the exchange thereof intended to be made by these presents, or would have been settled upon or subject to, in case the exchange intended to be made by these presents had not been made (*k*): AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said exchange, and in consideration of the grant and conveyance hereinbefore expressed to be made as aforesaid, the said D. E., under or by virtue of the power or authority in this behalf in him vested under the said acts of Parliament, of the fifty-fifth year of the reign of King George the Third, and the sixth year of the reign of King George the Fourth, or one of them (*l*), and upon the acceptance of the said A. B., and with the consent of the said ——, Lord Bishop of ——, as such patron and ordinary as aforesaid, testified as aforesaid, hath granted and conveyed in exchange, and by these presents doth grant and convey in exchange unto the said A. B., rector of the said rectory of ——, and his successors: ALL THAT &c., [*parcels*], and which last-described premises contain altogether, by admeasurement, —— or thereabouts, together with the timber growing thereon, situate, lying, and being in the parish of —— aforesaid, as the same are more particularly described in the map or plan drawn in the margin of these presents, which said map or plan is copied from the map made and verified as hereinbefore is mentioned, and all quarries, &c., [*general words—see supra, p. 302*]: TO HAVE AND TO HOLD the said fields, cottages, hereditaments, and all and singular other the premises lastly hereinbefore expressed to be hereby granted and conveyed in exchange unto and to the use of the said

OF GLEBE.

Witnesseth further, conveyance in exchange to the rector.

Parcels given in exchange to the rector.

Habendum.

(*k*) See infra, n. (*l*).

(*l*) By the statute 55 Geo. 3, c. 147, s. 12, tenants for life and other incapacitated persons are empowered under certain restrictions to sell or give in exchange lands for the purposes of the act. The tenant for life in the precedent conveys under that power.

Incapacitated persons empowered to exchange.

OF GLEBE.

A. B., as rector of the said rectory of ——, and his successors for ever, so that the same fields, cottages, hereditaments, and premises may for ever hereafter be the glebe-land and premises (*m*) of and annexed to the said rectory of ——, to all intents and purposes whatsoever, and be holden and enjoyed by the same incumbent and his successors, pursuant to the said acts of Parliament, of the fifty-fifth year of the reign of his said Majesty King George the Third, and the sixth year of the reign of his said Majesty King George the Fourth, respectively, IN EXCHANGE for the said parsonage-house, coach-house, stables, garden, glebe-land, and premises hereinbefore granted and conveyed in exchange by the said A. B., or expressed and intended so to be (*n*): [*Covenant from A. B. with D. E. against incumbrances, (ante, Vol. 3, p. 249), as to the* "rectory house, hereditaments, and premises hereinbefore expressed to be granted and conveyed by him the said A. B."]: AND FURTHER, THAT he the said A. B. shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose by the said D. E. or his heirs, or of any other person or persons interested in the premises, and at the proper costs and charges in the

Covenants by the rector against incumbrances;

—and for further assurance.

Peculiar use of the word "premises."

(*m*) The word "premises" is taken from the act; it will be observed that it is not used here in the ordinary technical sense, nor even in its popular sense. (See ante, Vol. 3, p. 200, n. (*o*); see, too, *Hide* v. *Whistler*, Poph. 146; 11 Co. Rep. 51).

As to the validity of an exchange when no house is taken by the incumbent in exchange for the parsonage-house granted, see supra, p. 301, n. (*i*).

As to leases of lands taken in exchange by a parson.

(*n*) It is doubtful whether the incumbent can grant a lease which shall be binding on his successor of lands taken by him in exchange; for the statute 13 Eliz. c. 10, s. 3, enacts, that all leases by parsons, or other ecclesiastical persons, other than those "whereupon the accustomed yearly rent or more shall be reserved," shall be utterly void. Thus a lease by a vicar of newly reclaimed lands, which had never before been in a condition to be let, was held void, because there was no accustomed yearly rent. (*Doe* d. *Tennyson* v. *Lord Yarborough*, 1 Bing. 24; S. C. 1 J. B. Moore, 258). If, therefore, the accustomed yearly rent means an accustomed yearly rent on a demise by the incumbent, of course there can be no valid lease (beyond the incumbent's life) of lands newly taken in exchange. But it is possible, that if the lands had been in lease before the exchange, a lease by the incumbent, at the old rent, would be valid.

OF GLEBE.

law of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting and conveying in exchange the said parsonage-house, hereditaments, and premises hereinbefore expressed to be granted in exchange by him the said A. B., to the uses hereinbefore limited, expressed, or declared, as by the said D. E. or his heirs, or any of the persons interested in the premises, or his or their counsel in the law, shall be reasonably devised, or advised and required: AND THE SAID D. E. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his successors and assigns, that he the said D. E. hath not at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing, whereby, or by reason or means whereof, he is in anywise prevented or hindered from granting or conveying in exchange the said fields, hereditaments, and premises hereinbefore expressed to be granted and conveyed in exchange by him the said D. E., unto and to the use of the said A. B., his successors and assigns, in manner aforesaid, according to the true intent and meaning of these presents, or whereby, or by reason or means whereof, the said last-mentioned fields, hereditaments, and premises, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered, in title, estate, or otherwise howsoever: AND FURTHER, THAT he the said D. E. shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose by the said A. B. or his successors, or any other person or persons interested in the premises, and at the proper costs and charges in the law of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better,

Covenants entered into with the rector against incumbrances;

—and for further assurance.

OF GLEBE.

more perfectly and absolutely granting and conveying in exchange the said fields, hereditaments, and premises hereinbefore expressed to be granted and conveyed in exchange by him the said D. E., unto and to the use of the said A. B. and his successors, as by the said A. B. or his successors, or his or their counsel in the law, shall be reasonably devised, or advised and required]. IN WITNESS &c. (*o*).

As to the attestation and formalities.

(*o*) As to the attestations and other formalities prescribed by the statute, see supra, p. 301, and the act 55 Geo. 3, c. 147, particularly sections 1, 10, and 19. See, too, the Precedent of an exchange of charity lands, supra, Precedent XX., pp. 273 and 285.

The parson protected from eviction.

After an exchange under this act, the incumbent is by the third section protected from eviction. This section gives all parties the same rights against the lands given by the incumbent in exchange, as they would have had against the lands taken by him in exchange if the exchange had not been effected. This is different from the case of an exchange of charity land, (see supra, Precedent XX., p. 273), and is certainly more convenient to the incumbent, though not fair towards the persons whose estate has been given in exchange by persons who, it may be, had no title at all to the estate. In the case of a charity, the commission examines and reports as to title, (see supra, p. 295), but not in the case of an exchange under this act.

SETTLEMENTS.

THE law with regard to Settlements will be discussed ante, Vol. 1, Art. SETTLEMENTS.

Settlements of personal estate.

In framing settlements of personal estate, the draftsman must first introduce such recitals as are necessary to shew what the property is, which is intended to be settled; he must next state the motive of the settlement, as marriage, the desire of making provision for the settlor's family, and the like; and then set forth the agreement or intention as to the nature and terms of the settlement. The recitals must then proceed to shew that all those branches of the agreement or intention, the execution of which should precede that of the settlement, have been executed, as that stock has been transferred, or monies due on securities assigned to the trustees, or policies of assurance effected in their names. The witnessing parts, in the first place, vest in or secure to the trustees such property as has not been previously vested in or secured to them, (as by assigning any monies or securities not previously assigned to them, or by containing covenants for payment of monies to them), and then proceed to the declaration of the trusts. The first trust gives the trustees the requisite powers for the investment and laying out of the trust funds, and for varying the securities from time to time as may be desirable; and the subsequent trusts follow according to the order in which they are intended to take effect. Provisoes modifying trusts for the most part immediately follow the trusts to which they relate, but sometimes it is more convenient to place them after all the principal trusts, in order not to break the continuity of the principal declaration. This is a matter of fact, and of decision in each particular case. Covenants as to collateral acts, such as covenants relating to keeping on foot policies of assurance, and covenants as to the settlement of after-acquired property, and declarations of trust of any funds, the trusts of which it is convenient to declare by reference to the previous trusts, are usually placed towards the end of the settlement; and the last place is appropriated to those clauses (called trustee clauses) which specially relate to the powers, duties, and indemnities of trustees,

and the appointment of new trustees. Thus, in an ordinary marriage settlement, (of which the first precedent is an example), the life interests of the husband and wife, and the interests of the children after the death of their parents, are declared in the first place, and are followed by provisoes and clauses modifying the interests of the children, and providing out of the trust funds for their advancement, maintenance, and education, and regulating the disposal of any surplus income. Then come the trusts which are to take effect if there shall be no children of the marriage who shall become entitled to the funds under the preceding trusts; and the settlement is concluded by the clauses empowering the trustees to give effectual receipts, providing for the appointment, when needful, of new trustees; and for the indemnity of the trustees against involuntary losses, and for the payment of their expenses. Of course, the foregoing outline, although seldom departed from, is often greatly modified by the necessity of introducing the numerous provisoes, covenants, and stipulations which the fancies of the parties, or the peculiar nature of the property, may require. The following precedents supply many examples.

Settlements of real estate.

It is, for the most part, much easier to frame settlements of real than of personal estate, unless the subject of the settlement has been very much perplexed by previous dealings with it. The recitals, of course, shew the interest of the settlor, and the condition of the property, and the motive of the settlement, and the agreement as to its terms, as in settlements of personal estate. Any acts or instruments too, the performance or execution of which should precede the execution of the settlement, must be duly noticed. But commonly, the recital of the agreement is general, viz. that the estate should be conveyed to the uses, &c., afterwards limited, and nothing requires to have been done to prepare the way for the settlement. The witnessing part or parts then consist merely of appointments or conveyances, followed by a declaration of the uses and trusts. The shorter trusts, as those to preserve contingent remainders, are expressed at the same time the estate is limited; the longer, as those of terms of years, are declared separately, after the limitation of the uses is completed. Then follow the powers enabling the creation of new interests in the estate, such as powers of jointuring and raising portions, then the powers of leasing and management, and then the powers of sale and exchange. The clauses relating to the trustees conclude the settlement, as in a settlement of personalty.

The very great length to which settlements of real estate generally extend, has precluded the insertion of a numerous selection of them in these volumes. But this is of less consequence, on account of the usual uniformity of their limitations and powers; and it is hoped that examples of most of the ordinary forms will be found in the following Precedents.

I.

SETTLEMENT *on* MARRIAGE *of a Sum of* STOCK, *with the usual Power for* VARYING SECURITIES. *The* DIVIDENDS *during the* JOINT LIVES *of Husband and Wife to be paid to the Wife for her* SEPARATE USE, *with a* RESTRICTION *on* ANTICIPATION; *after the Death of One of them, to the* SURVIVOR *for* LIFE; *after the Death of the Survivor, the Stock and Dividends to be for the* CHILDREN *as the* HUSBAND *and* WIFE *or the Survivor shall* APPOINT, *and in* DEFAULT *of* APPOINTMENT *for* SONS *attaining Twenty-one, and* DAUGHTERS *attaining that Age or Marrying, equally.* HOTCHPOT, ADVANCEMENT, MAINTENANCE, *and* ACCUMULATION *Clauses.* IN DEFAULT *of* CHILDREN, *the Fund is given to the* WIFE *or her* NEXT *of* KIN, *so as to* EXCLUDE *the* HUSBAND. TRUSTEES' RECEIPT *Clause.* POWER *to appoint* NEW TRUSTEES. CLAUSES *for the* INDEMNITY *of the* TRUSTEES *and the Payment of their* EXPENSES.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part: WHEREAS the said C. D. is entitled to a sum of £——, —*l.* (*a*) per cent. (*b*) —— Bank Annuities, lately standing in her name in the books of the Governor and Company of the Bank of England: AND WHEREAS a marriage hath been agreed upon, and is in-

Parties.

Recital of the intended wife being possessed of a sum of stock;

—of the agreement for the marriage;

(*a*) The rate of interest of the stock, as 3*l.*, 3*l.* 10*s.*, &c.

(*b*) The denomination (if any) of the stock, as Consolidated, Reduced, &c.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

tended to be shortly had and solemnized, between the said A. B. and C. D. (*c*): AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said sum of £——, —*l.* per cent. —— Bank Annuities, should be transferred into the names of the said E. F. and G. H.; and that the said E. F. and G. H., their executors, administrators, and assigns, should stand and be possessed of and interested in the same, and the dividends and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively: AND WHEREAS, in pursuance of the said agreement, the said C. D. hath, with the privity and consent of the said A. B., (testified by his being a party to and executing these presents (*d*)), trans-

—of the agreement to transfer the stock to trustees on the trusts to be declared by the present deed;

—of the transfer having been made.

In what place the agreement for the marriage should be recited.

(*c*) It is the practice of many draftsmen to commence marriage settlements with this recital, so that it precedes the recitals stating the property to be settled. But this is not in accordance with the general rule observed in other instruments, that the statement of the property to be dealt with should always form the commencement of the draft, as being the first in order of date. Thus, in the present case, the wife was possessed of the stock before the marriage was agreed upon.

Invalidity of dispositions made by the wife of her property after a marriage has been agreed on, unless the husband be privy to the disposition.

(*d*) To all settlements made before marriage of any of the wife's property, the husband is made a party, and usually his assent is expressly noticed, as in the text. The reason of this is, that a disposition made by the wife, either in favour of strangers or of herself, after an agreement for marriage has been entered into, without the privity of her husband, is liable to be set aside, at the suit of the husband, as a fraud on his legal right to the wife's property. Most of the cases on this head are cases of actual fraud on the part of the wife; but in the modern case of *Goddard* v. *Snow*, 1 Russ. 484, a woman, ten months before her marriage, settled a sum of money so as to exclude any husband she might take from all right to it. This settlement was made after the commencement of an intimacy, which led to her marriage, and probably, though not certainly, after a marriage had been agreed upon; the husband did not know, till after his wife's death, either of *the existence of the money settled*, or of the settlement; and it was held, on a bill filed by him, that the settlement was void, and that the money belonged to him. The authority, however, of *Goddard* v. *Snow* can hardly be relied on; for it appears to be at variance with Lord *Eldon's* decision in *De Manneville* v. *Crompton*, 1 Ves. & B. 354, and with the case of *Thomas* v. *Williams*, 1 Mosely, 177; see, too, 1 Myl. & K. 622. The most recent case on the subject is *St. George* v. *Wake*,

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

ferred the said sum of £——, —*l.* per cent. —— Bank Annuities, into the names of the said E. F. and G. H. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby agreed and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand possessed of and interested in the said sum of £——, —*l.* per cent. —— Bank Annuities, and the dividends thereof, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime, until the solemnization of the said intended marriage; AND FROM AND AFTER the solemnization thereof, UPON TRUST that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall either permit and suffer the whole or any part of the said sum of £——, —*l.* per cent. —— Bank Annuities, to remain in its actual state of investment, or do and shall at any time or times, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them, during his or her life, and after the death of the survivor of them at the discretion of the said E. F. and G. H., or of the survivor of them, or of the executors or administrators of such survivor, sell, transfer, and dispose of the said sum of £——, —*l.* per cent. —— Bank Annuities, or any part thereof, and do and shall, with

Witnesseth, declaration of trust of the stock;

—for the intended wife until the marriage;

—after the marriage, upon trusts as to the investment and variation of the trust monies and securities;

---

1 Myl. & K. 610, in which all the earlier cases are cited and commented on by Lord Brougham, and the general result, according to his Lordship's view, is stated Id. pp. 622, 623.

The object of the settlement is a point to be considered, inasmuch as, in some cases, settlements made by widows, in contemplation of second marriages, in favour of the children of the former marriage, have been held good against the second husband, although made without his knowledge. In other cases, however, such settlements have been set aside.

Such dispositions may, perhaps, be rendered valid by their object.

In the case of *Edmonds* v. *Dennington*, 1 Eq. Ca. Ab. 59, an agreement made before a first marriage, *that the wife should have a power to* act as a feme sole, was held void at the suit of a second husband, who married without a knowledge of the settlement. But the circumstances of the case are not stated; and of course, in ordinary cases, a settlement on a first marriage is valid against any future husband.

How far a settlement on a prior marriage is binding on an after-taken husband.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

such consent or at such discretion as aforesaid, lay out or invest the monies to arise by such sale, transfer, or disposition, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland (*e*)), and shall and may from time to time, with such consent, or at such discretion as aforesaid, alter, vary, or transpose such stocks, funds, or securities into or

---

Necessity of an express restriction against lending money on real securities in Ireland.

(*e*) It was enacted by the statute 4 & 5 Will. 4, c. 29, that it should thenceforth be lawful for any person or persons, who, under or by virtue of any direction, trust, or power then already given, created, or reserved, or *thereafter* to be given, created, or reserved, was or were or should be authorized or directed to lend money at interest on real securities in England or Wales, or Great Britain, to lend the same or any part thereof at interest on real securities in Ireland, in the same manner, in all respects, as if such investment had been expressly authorized in or by such direction, trust, or power as aforesaid; and that such person or persons should not, on account of his or their so lending money on real securities in Ireland, be considered, in a court of equity, guilty of any breach of trust, or held accountable further or otherwise than if the money had been laid out by him or them on real securities in England, Wales, or Great Britain; but nevertheless, that all such loans of any money in which *any minor, or unborn child*, or person of unsound mind, was or might be interested, should be made by the direction, and under the authority of the Court of Chancery or Exchequer in England, such direction or authority being obtained in *any cause upon petition, in a summary way*. This, however, is to be read "in any cause, *or* upon petition in a summary way" and there must be a reference to the Master to approve of the security. (*Ex parte French*, 7 Sim. 510). The act also gives certain facilities for recovering money by suit in the English equity courts, and requires the consent, duly testified, of the person or persons, if any, whose consent may be required as to the investment upon real securities in England, Wales, or Great Britain. It declares, moreover, that the provisions shall not extend to any case in which such direction, trust, or power as aforesaid, did, or shall, or may contain any express restriction against the investment of such money as aforesaid, on securities in Ireland.

Now, as the intention of the parties, in the absence of express instructions, is always presumed to be, and probably is, to authorize real securities only in England or Wales, it has become the practice of conveyancers since the above act expressly to negative the power to lend money on Irish real securities.

for others of the same or a like nature (*f*); AND DO AND SHALL, during the joint lives of the said A. B. and C. D., —and upon further trust, during the joint lives of the hus-

(*f*) An express trust or direction as to the investment of the trust monies, and a power to vary such investment, should always be inserted in settlements of personalty. The usual form is that in the text, which reposes the power of investment, and of changing the securities, in the trustees or trustee for the time being, with the consent of the tenants or tenant for life, during their lives. Propriety of inserting a trust for investment, and a power to change securities.

In the absence of any direction as to investment, it is the duty of trustees to lay out all monies, which come to their hands in the Three per cent. Bank annuities, in which, as the safest and most permanent fund, the Court of Chancery lays out the monies of suitors. (*Ex parte Champion*, 3 Bro. C. C. 434; see, too, 16 Ves. 114). And if they lay it out in any other fund, they will probably be held liable for any loss which may be occasioned by the fall or insecurity of the fund. (*Hancom* v. *Allen*, 2 Dick. 498). It is said, however, that this case is wrongly reported, and is not an authority for holding trustees responsible, if they have laid out their money in government securities other than the Three per cents. (Lewin on the Law of Trusts, 311). It is said, too, that trustees are bound to invest in the Three per cent. consolidated annuities; but this at least does not hold, where the terms of their trust make it more convenient to invest in the Three per cent. reduced annuities (*Caldecott* v. *Caldecott*, 4 Madd. 189.) It does not seem clear, whether a trustee may not invest on mortgage, even in the absence of an express authority; (*Brown* v. *Litton*, 1 P. Wms. 141; *Knight* v. *The Earl of Plymouth*, 1 Dick. 126; *Pocock* v. *Reddington*, 5 Ves. 800; *Norbury* v. *Norbury*, 4 Madd. 191; *Poore* v. *Hawker*, 76; *Widdowson* v. *Duck*, 2 Mer. 494); but it is usually held, that he cannot, and of course he would never be advised, to make such an investment. The duty of trustees in the absence of such trust, as to money;

It does not, however, follow that trustees are bound to call in any specific fund which is transferred to them, in order to invest the produce in the Three per cents; it appears rather to be their duty to allow the security to remain unchanged, unless a change would *clearly* be for the benefit of the cestuis que trust. (*Howe* v. *The Earl of Dartmouth*, 7 Ves. 137, 150; *Angell* v. *Dawson*, 3 You. & C. 317; *Lord* v. *Godfrey*, 4 Madd. 454; see, too, *Mills* v. *Mills*, 7 Sim. 501). If the fund be converted by act of parliament into one bearing a lower rate of interest, although trustees may be absolutely protected by the provisions of the act if they assent to the conversion, yet they are only protected in dissenting, if, upon examination of the circumstances, it shall appear to the court that they acted prudently. (*Angell* v. *Dawson*, 3 You. & C. 308, 317.) —as to funds.

If the trust contains the usual power for the trustees to invest in the public funds, or upon government or real securities, they are not bound to invest in the Three per cents; (3 You. & C. 316); and if a power to The powers given by the usual directions to invest and vary securities;

band and wife, to pay the income of the trust monies

pay the dividends, interest, and annual proceeds of the said sum of £——, —*l.* per cent. —— Bank Annuities, and

---

vary securities be given them, they are not at liberty to convert into money a specific fund, which has been transferred to them, in order to invest the produce in the Three per cents, even though the specific fund be of a perishable nature. (*Lord* v. *Godfrey*, 4 Madd. 455; see, too, 3 You. & C. 317; *De Manneville* v. *Crompton*, 1 Ves. & B. 359). For such a power is given them, with a view to the security of the property and the common benefit of all the cestuis que trust, and not with a view to varying or affecting the relative rights of the cestuis que trust, as by increasing the income at the expense of the corpus of the trust fund, or vice versâ.

—do not authorize investments in certain securities.

Bank stock is not a government security. (7 Ves. 150; *Mills* v. *Mills*, 7 Sim. 501); nor are Bank stock or South Sea stock considered as included in the terms "good securities." (3 Atk. 444). East India Stock is, of course, in the same predicament; and an investment in an East India Company's loan is forbidden. (*Dimes* v. *Scott*, 4 Russ. 195; 3 Swanst. 66). But a power to invest in good securities probably authorizes an investment on mortgage. (*Widdowson* v. *Duck*, 2 Mer. 494).

It is usually considered, that the power to invest in government securities extends to an investment, at least for temporary purposes, in Exchequer bills; but where an act of parliament provided that monies subscribed for parliamentary undertakings should be paid into the Bank, in the name of the accountant-general of a court of equity, and be invested in the Three per cent. consolidated or Three per cent. reduced Bank Annuities, "or any government security or securities," it was held, that an investment in Exchequer bills was not authorized. (*Ex parte Chaplin*, 3 You. & C. 397).

Extent of the authorities to lend on real securities.

Trustees having power to lend on mortgage, are at liberty to advance two-thirds of the estimated value on lands; but the same rule does not apply to an advance on houses, or commercial real property, even if such be at all a proper security. (*Stickney* v. *Sewell*, 1 Myl. & C. 8).

An investment in turnpike securities may, perhaps, come within a permission to invest on real securities; (*Mills* v. *Mills*, 7 Sim. 501); but the money cannot be lent on mortgage to one of the trustees. (*Stickney* v. *Sewell*, 1 Myl. & C. 1; —— v. *Walker*, 5 Russ. 7).

Trustees forbidden to lend on personal security, except under an express authority;

—and such authority must be used with discretion.

Of course, trustees are not permitted to lend money on personal security, unless there be an express and clear direction for that purpose, even if the investment be to be made at their discretion. (*Ryder* v. *Bickerston*, 1 Eden, 149, n.; *S. C.* 3 Swanst. 80, n.; *Holmes* v. *Dring*, 2 Cox, 1); and personal security is not good security. (*Wilkes* v. *Steward*, G. Coop. 6). And where trustees were authorized to lend money on such personal security as should be thought good and sufficient, and they lent to a trader, the husband of the tenant for life, it was held to be a breach

of the monies to arise by the sale, transfer, or disposition thereof, or of any part thereof, and of the stocks, funds, and securities in or upon which the same monies, or any part thereof, may be invested to [such person and persons and for such intents and purposes as the said C. D. shall, notwithstanding her said intended coverture, by any writing

and securities, to the separate use of the wife, with a restriction on anticipation;

---

of trust, on the ground that the loan was made as an accommodation, and not with a view to the security of the trust-fund. (*Langston* v. *Ollivant*, G. Coop. 33). But if trustees are authorized to lend to a trader, and he fails, it is not a breach of trust to lend him (after he has got his certificate) the dividend received under his bankruptcy. (*Burt* v. *Ingram*, Lewin on the Law of Trusts, 307; see, too, *Keble* v. *Thompson*, 3 Bro. C. C. 112; *Ex parte Woodward*, 2 Dea. 401; *French* v. *Hobson*, 9 Ves. 103; *Collis* v. *Collis*, 2 Sim. 365).

Consents required should be given before investment.

If the consent of any person or persons is required in order to authorize the trustees to make an investment or vary a security, that consent should be previously obtained, since, in some cases at least, a subsequent approbation will not make good the want of the previous consent. (*Bateman* v. *Davis*, 3 Madd. 98; see, too, *Ryder* v. *Bickerton*, 3 Swanst. 80, n.).

Trustees bound to make good losses occasioned by improper dealings with the trust securities.

Trustees who do not invest at the proper time, or make improper sales of their securities, are charged with the loss by the rise in stocks. Thus, trustees, who were directed to invest in government or real securities, and who allowed part of the funds to remain invested in an Indian loan, were charged with the difference between the ten per cent. interest they had received and paid to the tenant for life, and the interest that would have resulted from a conversion into Three per cent. consols at the proper time. (*Dimes* v. *Scott*, 4 Russ. 195). And if the Three per cents. have risen in the interval, the trustees must purchase the sums they would have obtained with their money if laid out at the proper time. (*S. C.*; and *Hockley* v. *Bantock*, 1 Russ. 141; *Byrchall* v. *Bradford*, 6 Madd. 235). And if the Three per cents. have fallen, the cestuis que trust will, of course, have the advantage of the fall. (*Harrison* v. *Harrison*, 2 Atk. 121; *Earl Powlett* v. *Herbert*, 1 Ves. jun. 297; *Pocock* v. *Reddington*, 5 Ves. 794; *Bostock* v. *Blakeney*, 2 Bro. C. C. 653; 4 Ves. 497; *Bate* v. *Scales*, 12 Ves. 402). It seems, however, that if trustees be authorized to invest in government or real securities, and they lend on personal security, and the money is lost, they shall be charged, not with the amount of stock which might have been purchased, but only with the actual money lost; for they might have lent on real security, and it is only for the absence of such security that they are liable. (*Marsh* v. *Hunter*, 6 Madd. 296).

Reference to further information.

Further information with respect to the duty of trustees, as to the investment of trust-monies and the variation of their securities, will be found in Lewin on the Law of Trusts and Trustees, ch. xvi. sect. 3, pp. 305—316.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

under her hand, from time to time direct or appoint, and in default of and until such direction or appointment, and so far as no such direction or appointment shall extend, into the proper hands of] the said C. D., for her sole and separate use, independently and exclusively of the said A. B., and of his debts, control, interference, and engagements, but so, nevertheless, that the said C. D. shall not have power to deprive herself of the benefit thereof by any [direction, appointment, or other] disposition thereof, by sale, mortgage, charge, or otherwise, in the way of anticipation; And the receipts of the said C. D. [and her appointees] to be good and effectual discharges for the said dividends, interest, and annual proceeds (*g*); AND, FROM

—and after the

Trusts for the separate use of married women.

(*g*) The law with regard to trusts for the separate use of married women, will be treated of ante, Vol. 1, Art. SETTLEMENTS; but it may be expedient to notice in this place one or two points of practical importance to the draftsman.

Impropriety of the power preceding the proper trust for the separate use.

The first is, that, although the usual form gives the wife, in the first instance, an express power of appointment, prior to the declaration of the proper trust for the separate use, yet this is supererogatory; for the power of disposition is a necessary incident to the simple trust for the separate use, inasmuch as the effect of such a trust is to place the wife, with regard to the settled fund, in the situation of a feme sole. (*Fettiplace* v. *Gorges*, 1 Ves. jun. 46; *S. C.* 3 Bro. C. C. 8; *Barrymore* v. *Ellis*, 8 Sim. 1). And the trust for the separate use of a married woman not only gives her the power of absolute disposition over the fund, by a formal charge or assignment, but renders it liable to her general engagements. (*Murray* v. *Barlee*, 3 Myl. & K. 209; and the cases cited in the arguments and judgment). The form in the text has been retained, as being nearest to the old established one; but it was framed when the nature of a trust for separate use was not fully understood, and has been generally abandoned since the decision in *Barrymore* v. *Ellis*, (8 Sim. 1), (see infra, p. 11), which necessitated either an abandonment of the power or an alteration in the form. The new form is given infra, in Precedent VIII.; but the omission of the words in the text placed within the brackets will accomplish the desired object. The trust for a separate use must be clearly expressed, as it will not be inferred or implied from vague or ambiguous expressions. (*Stanton* v. *Hall*, 2 Russ. & My. 175; *Tyler* v. *Lake*, Id. 183; *Massey* v. *Parker*, 2 Myl. & K. 174; *Kensington* v. *Dollond*, Id. 184). The best form, perhaps, is that in the text, expressly excluding the husband's right; but the expressions "separate use" or "sole use" alone, or other similar expressions, will create a trust

Necessity of expressing clearly the trust for the separate use;

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

AND AFTER the death of such one of them the said A. B. and C. D. as shall first die, do and shall pay the dividends, interest, and annual proceeds of the said trust-monies, stocks, funds, or securities to, or permit the same to be received by, the survivor of them during his or her life: AND IT IS HEREBY FURTHER agreed and declared between and by the parties to these presents, that, from and after the death of the survivor of them the said A. B. and C. D., the said E. F. and G. H., their executors, administrators, and assigns, shall stand possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, IN TRUST, for all and every or such one or more exclusively of the others or other of the children of the said intended marriage, with such provision for their respective maintenance and education or advancement, at such age, day, or time, or respective ages, days, or times, if more than one, in such parts, shares, and proportions, and with such annual sums

death of either husband or wife, to pay the income to the survivor for life;

Declaration of trust, of the trust-monies, securities, and income, after the death of both husband and wife;

—for the children of the marriage, as the husband and wife shall appoint;

---

for a separate use. (*Adamson* v. *Armitage*, 19 Ves. 416; *S. C.*, G. Coop. 283; *Ex parte Ray*, 1 Madd. 199; *Wills* v. *Sayer*, 4 Madd. 409). This question seldom arises on marriage settlements, as the husband's right is generally clearly negatived in such instruments, but it frequently occurs in the construction of wills. In a recent case on a will, the words "inpendent of any other person" were held to create a separate use. (*Margetts* v. *Barringer*, 7 Sim. 482). The trust in marriage settlements should never extend to any other than the immediately contemplated coverture, so that it may cease beyond dispute on the death of the husband. (See *Barton* v. *Briscoe*, Jac. 603; *Jones* v. *Salter*, 2 Russ. & My. 208).

It is not necessary here to notice the recent cases on the efficacy of the restraint on the power of anticipation, as the validity of that restraint in settlements made in actual contemplation of a particular marriage was never disputed. It is only necessary to caution the draftsman to employ proper words in imposing the restraint, as nothing but a clear and express direction will be efficient. (*Acton* v. *White*, 1 S. & S. 429). If, too, the power of appointment be allowed to remain, care must be taken that the restriction on anticipation extends not only to a disposition under the power, but also to a disposition made by virtue of the separate estate in default of appointment; for where the clause imposing the restraint immediately followed the power, (as is the case in many forms), it was held that the power of alienation incident to the separate use was in nowise affected. (*Barrymore* v. *Ellis*, 8 Sim. 1).

—and the restraint on anticipation;

—and of making the restraint on anticipation sufficiently comprehensive.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

of money and limitations over for the benefit of the said children, or some or one of them, and upon such conditions, with such restrictions, and in such manner as the said A. B. and C. D. shall, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by them both sealed and delivered in the presence of and attested by two or more credible witnesses (*h*), jointly direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by him or her sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will or testament, or any codicil or codicils thereto, or any writing in the nature of, or purporting to be, a will or codicil, direct or appoint (*i*); AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST for all and every the children and child of the said intended marriage, who, being a

—and in default of a joint appointment, as the survivor of the husband and wife shall appoint;

—and in default of any appointment, for the sons attaining twenty-one, and the daugh-

(*h*) These formalities, though not essential, are, perhaps, desirable, to prevent hasty and informal executions of the powers. No formalities should now be annexed to the execution by will or codicil. (See the act, 1 Vict. c. 26, s. 10).

Usual trusts for children.

(*i*) The usual trusts for children, in marriage settlements of personalty, are those in the text, viz. for such children and in such manner as the husband and wife shall jointly by deed appoint; and subject to any such appointment, as the survivor shall by deed or will appoint; and subject to any appointment under either power, in equal shares for all the children, who, being sons, shall attain twenty-one, or, being daughters, shall attain that age or marry under it. Sometimes it is required that the daughters' marriages shall be with the consent of their guardians. The trust in default of appointment should never be for all the children to vest or be payable at twenty-one or marriage, with a clause of survivorship and accruer as to the shares of children dying under twenty-one and unmarried, except in the case when it is intended to exclude an eldest or only son, or an eldest daughter, for the time being, from taking a share in the trust funds; (see infra, Precedent X.); for the form in the text is much shorter and clearer than the other.

The objects and

With respect to what objects are within a power to appoint to children,

son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age, or marry, to be divided between or amongst such children, if more than one, in equal shares, and if there shall be but one such child, the whole to be in trust for that one child: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that no child or children taking any part of the said trust-monies, stocks, funds, and securities under or by virtue of any direction or appointment to be made by the said A. B. and C. D., or the survivor of them, in pursuance of the powers hereinbefore contained, or either of them, shall have or be entitled to any further or other share of or in that part of the said trust-monies, stocks, funds, and securities, of which no such direction or appointment shall have been made as aforesaid, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*k*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

ters attaining that age or marrying, equally.

Hotchpot clause.

Advancement clause.

---

and the extent of the power generally, see 2 Sugd. Pow. ch. xv., ss. 1 & 2; and ante, Vol. 1, Art. SETTLEMENTS. The following recent cases do not appear in Sugden :—A power to appoint to children does not authorize an appointment to grandchildren; but an alternate gift to other children in default of grandchildren is valid. (*Hewitt* v. *Lord Dacre*, 2 Keen, 622). And the same case confirms the right to appoint to the husband of an object of the power. (See, too, *Thornton* v. *Bright*, 2 Myl. & C. 230). An appointment to the separate use of a daughter for life, and after her decease as she shall appoint, and, in default, to her executors and administrators, is valid, and will vest the fund in an appointee under the daughter's will. (*Bray* v. *Bree*, 2 Clark & Fin. 453). An appointment to the trustees of a daughter's marriage settlement, which had expressly disposed of any interest the daughter might take under such appointment, is good. (*Limbard* v. *Grote*, 1 Myl. & K. 1). The judgment in *Thornton* v. *Bright*, 2 Sugd. Pow. 652, has been reversed on appeal, (1 Myl. & C. 230), thereby establishing, that an appointment of real estate to trustees, upon trust, for the separate use of a daughter during the joint lives of herself and her husband, is valid.

extent of a power to appoint to children.

(*k*) An object of a power to whom a share is appointed, is not excluded from taking another share of the unappointed funds. (2 Sugd. Pow. 238, and the cases there cited, note (*n*)). Hence, it is usual to in-

Hotchpot clause.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

them, and the executors and administrators of such survivor, at any time or times after the decease of the survivor of the said A. B. and C. D., or in the lifetime of them, or of the survivor of them, in case they, he, or she shall so direct, by any writing or writings under their, his, or her hands or hand, to levy and raise any part or parts of the then expectant or presumptive, or vested share or shares of any child or children of the said intended marriage, under the trusts hereinbefore declared, not exceeding in the whole for any such child one moiety or equal half part or share of his, her, or their expectant or presumptive, or vested share, and to pay and apply the same for his, her, or their preferment, advancement, or benefit, in such manner as the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit: AND IT IS HEREBY FURTHER agreed and declared between and by the parties to these presents, that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor,

Maintenance clause.

---

sert in settlements the clause in the text, (called the hotchpot clause), expressly providing that no child to whom a share is appointed shall take any share of the unappointed part, until each of the other children shall have received a share equal to that appointed to him or her.

Power of advancement.

(*l*) The power of advancement is usually confined to sons, on the supposition that daughters cannot need money to advance them in any business or occupation. This, however, is by no means true, in reference to the daughters of the poorer or middling classes, and, therefore, the clause in the text embraces daughters as well as sons.

Neither should the power be, as it sometimes is, confined to expectant shares; for, after shares have become vested, subject only to be partially divested by other children attaining a vested interest, i. e. have become presumptive, it is impossible, under common settlements, to apply any part of such shares until the death of one of the parents determines the trust for the separate use and the restraint on anticipation. And if there be no clause for the separate use, the husband and wife cannot, it seems, effectually dispose of her interest, if she takes a life estate; because such part of that life estate as may possibly be enjoyed by her after the husband's death, is a contingent reversionary interest in personal estate, and consequently inalienable during coverture, according to the well-known rule established in *Purdew* v. *Jackson*. (*Stiffe* v. *Everitt*, 1 Myl. & C. 37). The word "vested" is perhaps unnecessary, as no child can get any other than a pre-

do and shall, after the decease of the survivor of them the A. B. and C. D., pay and apply the whole or such part as the said E. F. and G. H. and the survivor of them, and the executors and administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the share or respective shares to which any child or children of the said intended marriage shall or may, for the time being, be entitled in expectancy, under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively; AND DO AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate all the residue thereof (if any) in the way of compound interest, by investing the same and all the resulting income and produce thereof, from time to time, in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said E. F. and G. H. and the survivor of them, and the executors and administrators of such survivor, to resort to the accumulation of any preceding year or years, and to apply the same, as to them or him shall seem meet, towards the maintenance and education of the child or children who shall, for the time being, be presumptively entitled to the same respectively, in like manner as such accumulations might have been applied under the power hereinbefore contained in case the same accumulations had been interest, dividends, or annual produce arising from the original trust fund in the year in which the same shall be so applied for maintenance and education (*m*): AND IT IS HEREBY FURTHER agreed and declared between and by the parties to these presents, that, in case there shall be no child of the said intended marriage,

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

Accumulation clause.

Declaration of trust of the funds, in case there be no

sumptively vested share till the death of one of the parents has put an end to the possibility of further issue; but it might be useful in case of the wife surviving and again becoming covert.

(*m*) No marriage settlement should omit to provide for the destination of the income after the deaths of the parents, during the possible mi-

Necessity of maintenance

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry (*n*), the said E. F. and G. H., their executors, administrators, and assigns shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or of so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained (*o*), UPON THE TRUSTS following, (that is to say), IN CASE the said A. B. shall die in the lifetime of the said C. D., then from and after his death, and such default or failure of children as aforesaid, which shall last happen, in trust for the said C. D., her executors, administrators, and assigns; BUT IN CASE the said C. D. shall die in the lifetime of the said A. B., then from and after the decease of the said A. B., and such default or failure of children as aforesaid, which shall last happen, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations as the said C. D. shall,

child of the marriage who shall become entitled;

—for the wife absolutely, if she survive her husband;

—if she die in his lifetime, as she shall by will appoint;

---

and accumulation clauses;

nority of the children. For if there be no express provision on the subject, the trustees cannot safely apply any part of the income to the maintenance or education of the children, the expectant owners of the fund, unless under the directions of the Court of Chancery. They are bound to accumulate the whole income for the benefit of the persons who shall become entitled to the principal fund.

—usual provisions of.

The usual provision is that in the text, enabling the trustees to employ what portion they choose of each child's expectant income, and to accumulate the residue for the persons ultimately becoming entitled, subject to a power for the trustees to resort to those accumulations, which may be made during the earlier years, when maintenance and education cost little, and to apply them in discharge of the greater expenses of succeeding years. Where the trustees have an express discretion, a court of equity will not control it, unless they obviously intend a fraudulent or mischievous exercise of it, or waive their right. (*Collins* v. *Vining*, 1 C. P. Coop. 472).

Trusts in default of children entitled;

(*n*) The trusts over, in default of children becoming entitled under the preceding trusts, must, of course, correspond accurately with the terms of the preceding trusts, so as to take effect only if and when the others fail.

exception to be made in.

(*o*) This saving has reference to any vesting or application under the general powers of appointment, or the power of advancement.

notwithstanding her coverture, by her last will and testament in writing, or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, direct or appoint (*p*); AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST for such person or persons as at the decease of the said C. D. would have become entitled thereto, under the statutes for the distribution of the personal estate of intestates, in case the said C. D. had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common, in the shares in which they would have been entitled under the same statutes (*q*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or of the trustees or trustee for the time being acting in the execution of the trusts of these presents, for any sum or sums of money payable to them or him under or by virtue of these presents, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the same respectively, or so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or ac-

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

—and in default of appointment, for the next of kin of her own blood, to the exclusion of her husband.

Trustees' receipt clause.

(*p*) It is usual to confine this power to an appointment by will, in order to put it out of the wife's power during the coverture, after all chance of there being children is at an end, to deprive herself of the benefit of the fund after the determination of the coverture.

—wife's power of appointment usually only testamentary;

(*q*) The object of this trust is of course to secure the reversion of the fund to the wife's family in exclusion of the husband. The common expression, her "next of kin" is inappropriate. (*Elmsley* v. *Young*, 2 My. & K. 780). The time, at which the persons composing the class to take the property are to be ascertained, must be expressly fixed. (See *Elmsley* v. *Young*, ubi infra; *Briden* v. *Hewlett*, 3 My. & K. 90; *Butler* v. *Bushnell*, 3 My. & K. 232). If the wife have no kin, (as when she is illegitimate), the husband, as her administrator, is entitled. *Hawkins* v. *Hawkins*, 7 Sim. 173.

—"next of kin" an inadequate expression to denote the persons entitled on intestacy.

Husband entitled—when.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

countable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received (*r*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said trustees in and by these presents nominated and appointed, or either (*s*) of them, or any future trustee or trustees to be appointed as hereinafter is mentioned, shall die or be abroad for twelve calendar months at one time, or be desirous of being discharged of and from, or refuse or decline, or become incapable to act in the trusts or powers hereby in them reposed, or to them given as aforesaid, before the said trusts or powers shall have been fully executed, performed, or discharged, or shall have become incapable of effect, then and in such case, and when and so often as the same shall happen, it shall be lawful for the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them, him, or her, in the presence of and attested by two or more credible witnesses, from time to time to nominate, substitute, or appoint one or more person or persons to be a trustee or trustees, in the stead or place of the trustee or trustees so dying, or being abroad, or desiring to be discharged, or refusing, declining, or be-

Power of appointing new trustees.

Trustees should be empowered to give receipts.

(*r*) This clause, empowering trustees to give effectual releases for monies paid to them in the execution of the trusts, is invariably inserted in settlements, and is, in most cases, absolutely essential. It is possible, that the clause may be superfluous in a settlement of the kind in the text, where the subject-matter is a sum of stock previously transferred into the names of the trustees, and where the only monies they can have to receive, are such as are paid them on a change of securities; for the power to lay out and invest the trust-monies implies a power to give sufficient discharges to the borrowers. (*Wood* v. *Harman*, 5 Madd. 368). See further, as to the power to give receipts, ante, Vol. 3, p. 293, n. (*g*); and infra, Precedent IV.).

"Any" and "either," when to be used.

(*s*) If the trustees are more in number than two, the word "any" should be substituted for "either." The expression "any or either of them" is very inaccurate, as "either" means one of two persons, while "any" refers to any one or more of three or more persons.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

coming incapable to act as aforesaid; and that when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, all the trust estates, monies, and premises, which shall then be vested in the trustee or trustees, so being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, either solely or jointly with the other trustee or trustees, or in the surviving trustee or trustees, or in the executors or administrators of the last surviving trustee (as the case may be), shall with all convenient speed be conveyed, assigned, and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees, and such new or other trustee or trustees, or if there shall be no continuing trustee or trustees, then in such new trustee or trustees only, upon the trusts hereinbefore declared [of and concerning the same trust estates, monies, and premises respectively (*t*)], or such of the same trusts as may be then subsisting, or capable of taking effect; And it is hereby agreed and declared, that the trustee or trustees so to be nominated, substituted, or appointed as aforesaid, shall and may in all things act and assist in the management, carrying on, and execution of all the trusts and powers aforesaid, in conjunction with the other then surviving or continuing trustee or trustees, if there shall be any such surviving or continuing trustee or trustees, and if not, then by himself or themselves, as fully and effectually, and shall and may have and exercise all the same power and powers, authority and authorities, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally in and by these presents nominated a trustee or trustees, and as the trustee or trustees named in these presents, his or their executors or administrators, in or to whose place such new trustee or trustees shall respectively come or succeed, are or is enabled to do, or could or might

(*t*) The words in brackets seem rather to refer to the case where different trusts are declared of different parts of the trust funds, and are, therefore, not appropriate, when the settlement contains but one set of trusts applying to the whole fund.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

have done, under and by virtue of these presents, if then living and continuing to act in the trusts or powers hereby reposed in or limited to him or them, anything hereinbefore contained to the contrary thereof in anywise notwithstanding (*u*): PROVIDED ALWAYS, and it is hereby declared, that

Trustees' indemnity clause.

(*u*) The power to appoint new trustees should never be omitted in any settlement, except in the very rare case of its being certain that all the cestuis que trust are, and must continue to be, competent of their own authority to discharge the old and appoint new trustees.

Power to appoint new trustees, nearly always essential;

—must state accurately all the cases in which new trustees are to be appointed;

The power should provide with great precision for all the events in which the appointment of new trustees may become necessary, and which are generally considered to be 1, the death; 2, the absence in foreign countries; 3, the desire to be discharged; 4, the refusal to act; 5, the declining to act; and 6, the incapacity to act—of any of the old trustees. In cases in which the power has omitted to provide for all the cases, it has been held by eminent conveyancers, that the 2nd and 3rd may be considered as included in the 4th and 5th cases, or either of them, and that the 3rd includes the 4th and 5th cases, and vice versa; but, of course, this result can only be got at by changing the real desire or refusal of the trustee into a fictitious desire or refusal, and always leaves an unpleasant doubt as to the validity of the new appointment. In preparing the power, the necessity of such forced construction must be obviated.

—how to be abridged;

If, however, it be desired to shorten the form, (which, it must be confessed, is rather prolix), the formalities annexed to the appointment may be omitted, and the direction, as to the transfer and vesting of the trust estates, be briefly expressed. See the form of appointing new trustees in the note at the end of this Precedent.

—in whom to be vested.

In marriage settlements, the power to appoint new trustees is nearly always given to the husband and wife during their joint lives,—to the survivor during his or her life,—and to the personal representatives of the survivor after the death of both. This arrangement is very convenient, and ought not to be disturbed without good reason.

—construction of;

With regard to the construction of powers to appoint new trustees, (see 2 Sugd. Pow. ch. xix.; Lewin on the Law of Trusts and Trustees, ch. xxiii. sect. 2; ante, Vol. 1, Art. SETTLEMENTS; see, too, infra, Vol. 5, the Precedents of the appointment of new trustees.

—female should not be appointed under;

It may be convenient, however, to observe, that not only is a feme covert an improper person to be appointed a new trustee, (Lewin, p. 89), but it is not right to appoint even a feme sole. (*Brook* v. *Brook*, 1 Bea. 531).

—does not provide for the bankruptcy or insolvency of trustees.

The ordinary power does not provide for the removal of a trustee on his bankruptcy or insolvency; but in the case of bankruptcy, a new trustee will be appointed by the Court of Chancery. (Stat. 6 Geo. 4, c. 16, s. 79; Archb. Bank. Law, 6th edit., p. 214; see, too, *Ex parte Wilkinson*,

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

the said several trustees hereby nominated and appointed, or to be appointed by virtue of the proviso last hereinbefore contained, and each and every of them, and the heirs, executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively only for such monies as they shall respectively actually receive, by virtue of the trusts hereby in them reposed, notwithstanding his or their or any of their giving, or signing, or joining in giving or signing any receipt or receipts for the sake of conformity, and any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them only for his and their own acts, receipts, neglects, or defaults respectively, and that any one or more of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust-monies shall or may be deposited or lodged, for safe custody or otherwise, in the execution of the trusts hereinbefore mentioned; and that they or any of them shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks or funds, in or upon which the said trust-monies or any part thereof shall be placed out or invested, nor for any other misfortune, loss, or damage, which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through their own wilful default respectively (*v*): AND ALSO THAT it shall be lawful for Power to the

2 Dea. 151; *Bainbridge* v. *Blair*, 1 Bea. 495; and ante, Vol. 1, Art. SETTLEMENTS.

(*v*) This clause, for the indemnity of trustees, is nearly always inserted in settlements. But, so far as regards their protection against the acts of their co-trustees, it does very little more than express the doctrine, which courts of equity hold, even in the absence of such a clause. (See Lewin on the Law of Trusts and Trustees, ch. xv. sect. 5, p. 268; ante, Vol. 1, Art. SETTLEMENTS). And so far, too, as it exonerates them in respect of the failure of proper agents and securities, it appears to add nothing to their safety. (See Lewin, ch. xvi. sect. 11, p. 299; see, too, the recent cases, *Moyle* v. *Moyle*, 2 Russ. & My. 170; *Macdonnell* v Indemnity to trustees.

OF STOCK, FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

the said trustees in these presents named, and such future trustee or trustees to be appointed as aforesaid, and every or any of them, their and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively, and also to allow to his and their co-trustee and co-trustees all costs, charges, damages, and expenses, which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto, in or about the execution of the aforesaid trusts or in relation thereunto (*x*).

trustees to retain and reimburse themselves their expenses.

IN WITNESS &c. (*y*).

Harding, 7 Sim. 176; *Clough* v. *Dixon*, 8 Sim. 594; *S. C.* 3 My. & C. 490; *Munch* v. *Cockerell*, 9 Sim. 339). In fact, the whole effect of this indemnity clause is to express the rule of equity, that trustees shall be liable only for losses occasioned by their own wilful acts or default; and if the clause be retained, it may be very properly reduced to that expression. (See the form in the next page). It may, however, be satisfactory to a trustee undertaking the trusts, to see, what he is told is the rule of equity made an express part of the contract, instead of being left to an implication of which he can know nothing.

Clause for the payment of the trustees' expenses.

(*x*) In the absence of special stipulations, trustees are entitled to pay or be repaid out of the trust-fund all costs and expenses which they fairly incur in the conduct of their trusts; but they are not entitled to any allowance for their time or trouble, except in very special cases, or unless such an allowance is expressly directed to be made them by the instrument creating the trust. (Lewin on the Law of Trusts and Trustees, ch. xxii.; and the recent cases *Moore* v. *Frowd*, 3 My. & C. 45; *Willis* v. *Kibble*, 1 Bea. 554). The clause in the text leaves the general rule of equity untouched, and may be very safely either omitted or cut down to the form given in the next page.

Propriety, in many cases, of using the following short trustee clauses.

(*y*) The preceding clauses for the appointment of new trustees, and for the indemnity of the trustees, and the payment of their expenses, are extremely and (as has been pointed out in the preceding notes) needlessly prolix. Long use still causes them to be inserted in most drafts; but whenever, from the trifling nature of the property or the urgent wish of the parties, brevity is an object, the practitioner need have no hesitation in the employment of the following form, which was settled about five or six years ago by a most eminent conveyancer, and is now in common use:—

Power to ap-

PROVIDED ALWAYS, and it is hereby agreed and declared

OF STOCK FOR WIFE, HUSBAND, AND CHILDREN, WITH USUAL CLAUSES.

between and by the parties to these presents, that if the said trustees in and by these presents appointed, or either* of them, or any trustee or trustees to be appointed as hereinafter is mentioned, shall die, or be absent from this kingdom more than twelve calendar months at any one time, or be desirous of being discharged of and from, or refuse or decline, or become incapable to act in, the aforesaid trusts, before the same shall be fully executed, then and so often as the same shall happen, it shall be lawful for the said ~~[husband] and~~ [*wife*], or the survivor of them, or the executors or administrators of such survivor, from time to time to appoint any other person to be a trustee or trustees in the stead of the trustee or trustees so dying, or being absent from this kingdom, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; and that, upon every such appointment, the said trust estates, monies, and premises shall be assigned, transferred, or conveyed in such manner, and so that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case may require; and every such new trustee shall have the same powers as if he or they had been originally named a trustee in these presents: PROVIDED ALSO, and it is further agreed and declared between and by the parties to these presents, that the trustees or trustee for the time being of these presents shall not be answerable the one for the other of them, and by no means for involuntary losses; and also, that it shall be lawful for the trustees or trustee for the time being to reimburse themselves or himself, out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, all their costs and expenses to be incurred in or about the execution of the aforesaid trusts.

point new trustees.

Clause for the indemnity of trustees and the payment of their expenses.

See the same form of appointing the new trustees, ante, Vol. 3, pp. 293, 294, with the exception that the power is reposed in the surviving or continuing trustees.

* See supra, p. 324, n. (*s*).

II.

APPOINTMENT OF A DAUGHTER'S PORTION, IN CONTEMPLATION OF HER MARRIAGE.

APPOINTMENT *by a* FATHER, *in contemplation of the* MARRIAGE *of his* DAUGHTER, *of part of a* SUM *of Money raisable under the* TRUSTS *of a* TERM *of Years* (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. D., of &c., [*appointor*], sendeth greeting: WHEREAS, by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made, or expressed to be made, between [*parties*], (being a settlement made subsequently to, but in consideration of, a marriage which had been had and solemnized between the said A. D. and E. D., [*his wife*]), divers messuages, farms, lands, and hereditaments, situate in the parish of ——, in the county of ——, and in the said indentures more particularly mentioned, were conveyed and assured and limited, TO THE USE &c., [*recites the limitations of the settlement down to, and including a term of —— years, under which the portion is raisable* (*b*)]; AND FROM AND AFTER the expiration or other sooner determination of the said term, and in the meantime subject thereto and to the trusts thereof, TO THE USES and upon and for the trusts, intents, and purposes, in the said indenture of re-

Party.

Recital of the marriage settlement of the appointor, creating a term of years for raising portions for the younger children of the marriage;

Appointment to be made by separate deed.

(*a*) When any part of the property to be settled is to be vested in the settlor by an appointment under a power, the appointment is usually made (as in the text) by a separate deed bearing even date with the settlement, and executed immediately before the execution thereof. (See infra, p. 333, n. (*a*).) Unless the power should require, which it scarcely or ever does, that the power be executed by indenture, a deed-poll is the most appropriate form of appointment.

(*b*) With respect to the mode of reciting settlements, see the examples, ante, Vol. 3, Precedents XXI. and XXIX., and the observations in the same volume, p. 222, n. (*c*), p. 281, n. (*a*); see, too, Ibid. p. 210, n. (*d*).

APPOINTMENT OF A DAUGHTER'S PORTION, IN CONTEMPLATION OF HER MARRIAGE.

lease declared and contained; AND IT WAS by the said indenture of release declared, that the said term of —— years was so limited to the said ——, and their executors, administrators, and assigns, as aforesaid, UPON TRUST that &c., [*recites at full length the trusts for securing the sum of £——, for the portions of the younger children of A. D. and E. D., to be divided among them as A. D. should appoint*]; AND WHEREAS the said E. D. is dead; AND WHEREAS there are —— children, all now living, of the body of the said A. D. on the body of the said E. D. begotten (*c*), other than and besides the eldest son and heir apparent of the said A. D.; AND WHEREAS C. D. is one of the said younger children, and a marriage has been agreed on, and is intended to be shortly had and solemnized between the said C. D. and A. B.; AND WHEREAS, upon the treaty for the said intended marriage, it was (among other things) agreed that the said A. D. should make such appointment to or in favour of the said C. D. as is hereinafter contained (*d*). NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreement, and pursuant to and by force and virtue and in exercise and execution of the power or authority to him the said A. D. for this purpose given by the said indenture of the —— day of ——, and of every or any other power or authority in anywise enabling him in this behalf, he the said A. D. doth, by this present deed or instrument in writing, by him sealed and delivered in the presence of and attested by the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting the sealing and delivery of these presents by him the said A. D., direct and appoint (*e*)

—of the death of the appointor's wife, and of the number of the younger children of the marriage;

—of the intended marriage;

—of the agreement for the appointment in favour of the intended wife.

Witnesseth, that, in pursuance of his power, the father of the intended wife appoints to her a part of the money raisable under the trusts of the term.

(*c*) The expressions of the recital should, of course, be those of the original trust.

(*d*) If an absolute appointment be desired, a recital of the appointor's desire to exercise his power "for the purpose and in manner hereinafter mentioned" may be substituted for the recitals of the agreement for the marriage and the agreement to appoint.

(*e*) With respect to the manner of exercising a power, see ante, Vol. 3, p. 211. The case of *Doe* d. *Spilsbury* v. *Burdett* has since been reversed, 1 Per. & Dav. 670.

APPOINTMENT OF A DAUGHTER'S PORTION, IN CONTEMPLATION OF HER MARRIAGE.

that the sum of £——, part of the sum of £——, or other the sum which is or shall be raisable under the trusts of the said term of —— years, shall, immediately upon the sealing and delivery of these presents, go and belong to and be vested in the said C. D., and that the same shall be paid to her the said C. D., her executors, administrators, or assigns, immediately after the death of the said A. D.: PROVIDED ALWAYS, and the said A. D. doth hereby declare, that the said C. D. shall not have or be entitled to any further or other share of or in that part of the said sum of £——, or of or in the sum which is or shall be raisable under the trusts of the said term of —— years, of which no direction or appointment shall have been made under the said power hereinbefore expressed to be exercised, without bringing her said appointed share of £—— into hotchpot, and accounting for the same accordingly (*f*): PROVIDED ALSO, and it is hereby declared, and the said A. D. doth hereby appoint, that in case the said intended marriage between the said A. B. and C. D. shall not take effect before the expiration of six calendar months from the date of these presents, then and in such case, and from and immediately after the expiration of the said six calendar months, this present appointment and every thing herein contained shall be void (*g*). IN WITNESS &c.

Hotchpot clause.

Proviso vacating the appointment, if the marriage do not take effect in a given time.

(*f*) A hotchpot clause is inserted, because the original settlement contained none. (See supra, p. 319, n. (*k*).

(*g*) If an absolute appointment be desired, this proviso will be omitted.

III.

ASSIGNMENT *to* TRUSTEES, *in contemplation of* MARRIAGE, *and upon Trusts to be declared by a* SETTLEMENT *of* EVEN DATE, *of a* SUM *of Money secured by a* MORTGAGE *of* LEASEHOLDS *and a Policy of* INSURANCE *against* FIRE, *of another* SUM *secured by a* MORTGAGE *of* FREEHOLDS, *of another secured by a* MORTGAGE *of a* LIFE INTEREST *and a* POLICY *of Assurance, and of another* APPOINTED *to the intended Wife, and raisable under a* TERM *of* YEARS. COVENANTS *for* TITLE *and* USUAL CLAUSES (*a*).

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c. [*in-*

Parties.

(*a*) When part of the property to be settled is money owing to the settlor on any real security, both the money and the security should be assigned and transferred to the trustees by one or more deeds of even date with, but executed before, the settlement. The trustees should be empowered by the deed of assignment to give receipts for the money, and they should be directed to hold the money upon the trusts declared by the settlement, which is referred to as being already prepared and engrossed; see infra, p. 336. The object of the assignment by a separate deed is to enable the trustees to make out the title to the money, without producing the settlement, or being obliged to furnish copies of it, or covenant for its production. All the person paying the money need look to, is the power for the trustees to give effectual receipts for it; and, being satisfied of this, the trusts of the settlement are to him of no consequence. It has, however, been suggested, that a purchaser of property, in respect of any charge on which such a transaction has taken place, has a right to see the settlement, in order to satisfy himself that it discloses no other matter affecting the title beyond that which appears in the assignment; for if the settlement did contain any such matter, the purchaser, having notice of the settlement, would have constructive notice of the matters disclosed in it. And it has been proposed, in order to meet this ob-

Monies secured on land should be assigned to the trustees by separate deed or deeds of even date with, but executed before, the settlement.

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

tended wife], one of the daughters of A. D., of &c., of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part: [*Recitals of a lease for a term of years, see ante, Vol. 3, p. 333; of a mortgage of the lease and of a policy of insurance against fire; of the transfer of the mortgage to A. B.; of a mortgage of freeholds to A. B., see ante, Vol. 3, p. 250; of the creation of a life interest in certain funds, and of the mortgage of the same interest, and of certain policies of assurance on the life of the mortgagor to A. B.; of an appointment in contemplation of the marriage to C. D. of a sum of money raisable under the trusts of the term, see the appointment, supra, p. 330*]: AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, on the treaty for the said intended marriage, it

Recitals of the instruments creating the interests to be assigned;

—of the agreement for the marriage;

—of the agreement to assign the mortgage monies;

---

jection, to declare in the deed of assignment, that the trustees shall hold the money on such trusts as the intended husband and wife shall jointly appoint, and that the power so given shall be exercised in the settlement: this plan certainly avoids all reference to the settlement, and appears reasonable; but it has not been so adopted by the profession as to warrant its introduction in a printed collection of precedents. It must be remembered, too, that the validity of such a claim as that referred to on the part of a purchaser has been disputed; and that, at any rate, in practice, it is usual to take the assertion of the vendor's solicitor as sufficient evidence that the settlement does not contain anything affecting the title which does not appear in the assignment.

In the precedent in the text, several mortgage debts are assigned by one deed: this is the practice most convenient to the settlor, because, while it relieves him from the necessity of future disclosures of his settlement, it puts him to the expense of only one deed besides the settlement. But if the convenience of the different mortgagors be considered, there should be assignments by separate deeds of the several debts; for, if there be but one assignment, only one of the mortgagors can have the custody of it, and the others must be contented with attested copies of it and covenants for its production.

The preceding observations apply to any charge on lands, and, therefore, of course to the case in the text, where one party is entitled to a sum of money charged on an estate under the trusts of a term. If this sum were to be assigned by the settlement itself, that instrument would thenceforth form one of the title deeds of the estate, and would have to be produced every time such title should be investigated. (See supra, p. 330, n. (*a*)).

was agreed that the said mortgage debts, or sums of £——, £——, and £——, and all interest now due or to grow due for the same respectively, and the securities for the same respectively, should be assigned and conveyed to the said E. F. and G. H., their heirs, executors, administrators, and assigns, in manner hereinafter mentioned, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared or referred to of and concerning the same respectively; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the sum of £——, so appointed to the said C. D. as aforesaid, should be assigned to the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared or referred to of and concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B., with the privity and approbation of the said C. D., (testified by her being a party to and executing these presents (*b*)), hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, THE SAID sum of £——, secured by the said indenture of the —— day of ——, and the said sum of £——, secured by the said indenture of the —— day of ——, and the said sum of £——, secured by the said indenture of the —— day of ——, and all interest now due and henceforth to become due for the same sums respectively, and the benefit of all covenants entered into for payment of the same sums respectively, and of all other covenants contained in the hereinbefore recited indentures of mortgage respectively, AND ALL THE ESTATE, right, title, interest, property, claim, and demand whatsoever of him the said A. B., of, in, and to the same premises, and

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

—and the money appointed to the wife.

Witnesseth, assignment to the trustees;

—of the mortgage monies and interest.

And all the estate, &c.

(*b*) It is usual to make the wife concur in any assignment made in contemplation of marriage of the husband's property; I presume, on a principle similar to that established in the reverse case. (See supra, p. 310, n. (*d*); but of course with much less reason.

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

every of them, and every part thereof, TOGETHER WITH full power and authority to ask, demand, sue for, recover, and receive, and give effectual receipts and discharges for, the said principal money and interest, and every or any part thereof, in the name or names of him the said A. B., his executors or administrators, TO HAVE, HOLD, RECEIVE, AND TAKE, the said sums of £——, £——, and £——, and the interest due and to grow due for the same respectively, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said A. B., his executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized; AND AFTER the solemnization thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed or described of and concerning the same, in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between [*parties—the settlement*]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. hath assigned, and by these presents doth assign unto the said E. F. and G. H., their executors, administrators, and assigns, ALL AND SINGULAR the said messuage or tenement, lands, hereditaments, and premises, in and by the said indenture of the —— day of ——, assigned, or expressed and intended to be assigned to the said A. B., his executors, administrators, and assigns, for the residue then to come of the said term of —— years, granted by the said indenture of the —— day of ——, with their appurtenances; AND ALSO, all that the said policy of insurance against fire, by the said indenture of the —— day of ——, assigned to the said A. B., his executors, administrators, and assigns, and all monies to become payable under or by virtue of the same, AND ALL THE ESTATE, &c.: TO HAVE AND TO HOLD the said messuage or tenement, lands, and he-

Power of attorney.

Habendum to the trustees.

In trust for the husband till marriage;

—and after the marriage, upon trusts to be declared by the settlement of even date.

Witnesseth, further, assignment to the trustees;

—of leaseholds, and a policy of insurance against fire; the security for one of the mortgage debts.

Habendum as

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

reditaments, And all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, (except the said policy of assurance, and the monies to become payable under or by virtue of the same), unto the said E. F. and G. H., their executors, administrators, and assigns, for all the residue now to come of the said term of —— years therein, subject, nevertheless, to the right and equity of redemption now subsisting therein under or by virtue of the said indenture of the —— day of ——, [*the mortgage deed*]; AND TO HAVE AND TO HOLD the said policy of insurance, and the monies to become payable under or by virtue of the same, unto the said E. F. and G. H., their executors administrators, and assigns, subject nevertheless to the equity of redemption now subsisting in the same under or by virtue of the said indenture of the —— day of ——, [*the mortgage deed*]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the said E. F. and G. H., (in their actual possession now being by virtue of a bargain and sale to them thereof made by the said A. B., in consideration, &c., *ante, Vol. 3, p.* 198), and their heirs, THE SAID PLOT or parcel of ground, hereditaments, and premises described and comprised in the said indenture of the —— day of ——, [*the mortgage deed*], and by the said indenture of the —— day of ——, conveyed to the use of the said A. B., his heirs and assigns, as hereinbefore is mentioned (*c*), AND ALL THE ESTATE, &c.: TO HAVE AND TO HOLD the said plot or parcel of ground, messuages, and hereditaments, and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be, unto the said E. F. and G. H., their heirs and assigns, To THE USE of the said E. F. and G. H., their heirs and assigns, subject to the equity of

to the leaseholds for the term, subject to the existing equity of redemption;

—and as to the policy, subject to the existing equity of redemption.

Witnesseth, further, conveyance to the trustees;

—of freeholds, the security for another mortgage debt.

Habendum, subject to the existing equity of redemption.

(*c*) As to the mode of describing the parcels in transfers of mortgage, see ante, Vol. 3, p. 645, n. (*b*).

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

redemption now subsisting in the same premises under or by virtue of the said indenture of the —— day of —— [*the mortgage deed*]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, THE INTEREST, dividends, annual produce, policies of assurance, sum and sums of money, and other the premises by the said indenture of the —— day of ——, assigned, or expressed or intended so to be, AND ALL THE ESTATE, &c.: TO HAVE AND TO HOLD the said interest, dividends, and annual produce, policies of assurance, sums of money, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, upon the trusts declared thereof (*d*), and subject to the equity of redemption subsisting therein, under or by virtue of the said indenture of the —— day of ——: AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, THAT, for and notwithstanding any act, deed, matter, and thing, by him the said A. B. made, done, committed, or executed, or knowingly or willingly suffered to the contrary, he the said A. B. now hath in himself good right, full power, and lawful and absolute authority, to assign and grant and release the said premises hereinbefore assigned and granted and released respectively, or expressed and intended so to be, unto the said E. F. and G. H., their heirs, executors, administrators, and assigns, in manner and upon the trusts aforesaid, according to the true intent and meaning of these presents; AND THAT he the said A. B., his heirs, executors, and administrators, and all and every other person or persons whosoever, having, or lawfully or equitably claiming,

Witnesseth, further, assignment to the trustees;

—of the life interest and policies of assurance, the security for another mortgage.

Habendum upon the subsisting trusts and equity of redemption.

Covenants by the husband with the trustees;

—for right to assign and transfer the mortgage debts and securities;

—and for further assurance.

(*d*) These trusts were trusts for sale; that form having been adopted in the mortgage deed in lieu of a common proviso for redemption with powers of sale. (See ante, Vol. 3, p. 478, n. (*q*)).

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

or who shall or may have, or lawfully or equitably claim, any estate, right, title, or interest, of, in, or to the said premises hereinbefore assigned and granted and released respectively, or expressed and intended so to be, or any of them, or any part or parts thereof, by, from, under, or in trust for him the said A. B., his heirs, executors, or administrators, or any of them, shall and will from time to time, and at all times after the solemnization of the said intended marriage, upon the request of the said E. F. and G. H., or the survivor of them, his executors or administrators, but at the costs and charges of the said A. B., his executors or administrators, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful acts, deeds, matters, and things, assignments, and assurances in the law whatsoever, for enabling the said E. F. and G. H., and the survivor of them, his executors and administrators, to recover and receive all and every the sum and sums of money hereinbefore assigned, or expressed and intended so to be; and for the further, better, and more effectually assigning and granting and releasing the said premises hereinbefore assigned and granted and released respectively, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, in manner and upon the trusts aforesaid, and according to the true intent and meaning of these presents, as by them the said E. F. and G. H., or the survivor of them, his executors or administrators, their or his counsel in the law, shall be reasonably devised or advised and required. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, she the said C. D., with the privity and consent of the said A. B., (testified by his being a party to and executing these presents (*e*)), hath assigned and by these presents doth assign unto the said E. F. and G. H.,

Witnesseth, further, assignment by the wife to the trustees;

(*e*) As to the inchoate right given to the intended husband in the wife's property by an agreement for marriage, see supra, p. 310, n. (*d*).

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

their executors, administrators, and assigns, ALL THAT the said sum of £—— so appointed to her the said C. D. by the hereinbefore recited deed-poll of even date herewith as aforesaid, and all interest and annual produce to grow due on or arise from the same, AND ALL THE ESTATE, &c.: TO HAVE AND TO HOLD the said principal sum, interest, and annual produce, And all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime, and until the said intended marriage; AND FROM AND AFTER the solemnization thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are declared and contained of and concerning the same, in and by the said indenture of even date with these presents [*the settlement*]: [*Covenants by A. B. and C. D. for right to assign, and for further assurance; see the form, infra, Precedent* VI.]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or the trustees or trustee for the time being acting in the execution of the trusts of these presents, for the several principal sums of money and interest hereinbefore assigned, or expressed an intended so to be, or any of them, or any part or parts thereof respectively, and for any other sum or sums of money payable to them or him under or by virtue of these presents, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the same respectively, or so much thereof as in such receipt or receipts shall be expressed or acknowledged to be received; and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in any-

—of a sum to which she is entitled under an appointment.

Habendum

—in trust for the wife till marriage;

—after marriage, upon trusts to be declared by settlement of even date.

Covenants for right to assign, and further assurance.

Trustees' receipt clause.

wise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received (*f*). [*Power for the appointment of new trustees, supra, p. 324 (g).*] IN WITNESS &c.

ASSIGNMENT TO TRUSTEES, IN CONTEMPLATION OF MARRIAGE, OF SUMS OF MONEY OUTSTANDING ON SECURITIES.

IV.

CONVEYANCE, *in contemplation of* MARRIAGE, *of a Moiety of a* FREEHOLD ESTATE *for* LIVES, *and of* POLICIES OF ASSURANCE *on the Lives, upon* TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE-MONEY *by Reference to a* SETTLEMENT *of* EVEN DATE. PROVISIONS *for a* RENEWAL *of the* LEASE *and* INSURING *the* NEW LIVES, *in case it become necessary before the Sale.* POWER *of* LEASING *until Sale. Usual Clauses and Covenants* (*a*).

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., Parties.

(*f*) This power for the trustees to give receipts for the monies assigned, is essentially necessary. (See ante, Vol. 3, p. 293, n. (*g*).; supra, p. 324, n. (*r*).

(*g*) The power of appointing new trustees is a necessary part of a deed of this nature, because the object would be defeated if a new appointment could only be made by referring to the power in the settlement. Of course the power in this deed must correspond verbatim with that in the settlement, so that a new trustee of both deeds may always be appointed at the same time.

As to the insertion in deeds of even date with settlements, of clauses for the new appointment, indemnity, and payment of trustees.

It is sufficient to insert the clauses for the indemnity of trustees, and for the payment of their expenses, in the settlement, taking care that the words of these clauses are sufficiently extensive to cover the trusts of the deed of assignment.

(*a*) Whenever land is intended to be settled in trust for all the children of a marriage, equally, or as the father or mother shall appoint, by far the best mode of settlement is, to vest the land in the trustees,

Land to be settled among the children of an intended mar-

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

(one of the daughters of A. D., of &c.), [*intended wife*], of the second part; and E. F., of &c., and G. H., of &c.,

upon trust for sale, and declare the trusts of the purchase-money, adding a provision, that the rents of the land, until a sale, shall be applied as the income of the purchase-money would be applicable, in case the sale had then been made, and the money invested; for the nature of land renders it extremely inconvenient to vest the legal inheritance in an indefinite number of children. The management of the land during the minority of the children, or after the majority of some and the minority of others, is difficult to provide for; and the needful provisions for the accruer and survivorship of children's shares, and for their advancement and maintenance, cannot be adapted satisfactorily, or otherwise than in a very cumbersome form, to settlements of real property. A precedent of such a settlement will be given farther on, because many settlors will not hear of their land being directed to be sold; but, in truth, this direction for sale is merely fictitious, and is given in order that the trusts may be conveniently and satisfactorily framed. The consent of the husband and wife or the survivor is always made requisite to a sale during their lives, and, even after their deaths, the trustees never sell, unless the cestuis que trust or those who are of age desire it: and then is the time at which one of the great advantages of this mode of trust is felt; for, if the legal estate be limited to the children, no sale can be made till *all* the children have attained twenty-one; and if, in the meantime, any of them die leaving infant heirs at law, or settle their shares by will or deed in an improper manner, the time for effecting a sale may be indefinitely postponed. Every solicitor should strongly impress upon his clients the advantages of a mode of settlement which enables a sale to be effected at any moment that the situation of the family requires it, without rendering it imperative a day before the convenient time.

riage should be impressed with a trust for sale;

It is to be observed, that the only proper way is, to impress the land with an actual trust for sale; a mere declaration, that it shall be held as money or deemed personal estate, is awkward and unmeaning, and, perhaps, ineffectual; at least, it is not possible to say what construction would be put on such a declaration, or how it would amalgamate with the usual trusts and clauses of a settlement of personal estate.

Of course, the land should be vested in the trustees by a deed of even date with, but executed before, the settlement, and the trusts of the purchase-money (for which the trustees must have power to give receipts) declared by reference to the settlement; for, otherwise, the settlement would form part of the title deeds of the estate,—a circumstance which would cause perhaps greater inconvenience to the settlor than in the case of a mortgage debt intended to be settled. (See supra, p. 333, n. (*a*)).

—by a deed of even date with, but executed before the settlement.

The precedent in the text deals with a lease for lives; but it may be easily applied to freeholds of inheritance, leaseholds for years, copyholds,

Precedent applicable to he-

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

[*trustees*], of the third part: WHEREAS, by an indenture bearing date the —— day of ——, and made or expressed to be made between the Dean and Chapter, of &c., of the one part, and M. N., of the other part: For the considerations therein mentioned, the said Dean and Chapter did demise and grant unto the said M. N. ALL THAT, &c. [*parcels from the lease, consisting of a parsonage, glebe lands, houses and tithes, with an exception of the right of presentation to the vicarage, of timber, &c.*]; To hold the same unto the said M. N., his heirs and assigns, for the lives of X. then aged —— years, Y. then aged —— years, and Z. then aged —— years, and for the life of the longest liver of them, at the yearly rent of £——, and under and subject to the covenants, conditions, and agreements in the said indenture contained, and on the part of the lessee, his heirs or assigns, to be observed and performed; AND WHEREAS a policy of assurance, bearing date the —— day of ——, and numbered ——, was effected with the —— Assurance Office, in the name of the said M. N., on the life of the said X., for the sum of £——, and under the actual premium of £——, now reduced to £——; [*Recitals of similar policies on the lives of Y. and Z.*]; AND WHEREAS, by divers mesne assurances and acts in the law, one equal moiety or half part of the said parsonage, glebe houses, lands, and tithes, by the said indenture of the —— day of ——, demised, or expressed and intended so to be, for the lives aforesaid, and also one equal moiety or half part of the said policies of assurance on the lives of the said X., Y., and Z., and of the monies to become payable thereunder, became vested in the said A. B.; AND WHEREAS a marriage has been agreed on, and is intended to be shortly had and solemnized, between the said A. B. and the said C. D.; AND WHEREAS, on the treaty for the said intended marriage, it was agreed that the said A. B. should convey and assign, in manner hereinafter mentioned, the said moiety of him the said A. B. of and in the said parsonage, glebe

Recital of a lease for lives;

—of policies of assurance having been effected on the lives of the cestuis que vie;

—of an equal moiety of the lease and the policies having become vested in the intended husband;

—of the agreement for the marriage;

—of the agreement that the husband's estate in the lease and policies should be settled.

---

or hereditaments of any tenure. A precedent of a similar deed, dealing with a reversionary copyhold estate, is given infra. See Precedent XI., and see too Precedent XII.

reditaments of any tenure.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

houses, lands, and tithes, comprised in the said indenture of the —— day of ——, [*the lease*], and of and in the said policies of assurance on the lives of the said X., Y., and Z., respectively, unto the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained or referred to of and concerning the same respectively: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, he the said A. B., with the privity and consent of the said C. D., (testified by her being a party to and executing these presents) (*b*), hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the said E. F. and G. H., (in their actual possession now being, by virtue of a bargain and sale thereof to them made by the said A. B., in consideration, &c.), ALL THAT the equal moiety or half part of him the said A. B. of or in the said parsonage, glebe houses, lands, tithes, hereditaments, and premises demised, or expressed to be demised, by the said indenture of the —— day of ——, with their appurtenances; AND ALL THE ESTATE, &c.: TO HAVE AND TO HOLD the said equal moiety or half part, and all and singular other the premises hereinbefore released, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators (*c*), and assigns, TO THE USE of the said E. F. and G. H., their executors, administrators, and

Witnesseth, conveyance to the trustees;

—of the freehold hereditaments.

Habendum for the lives of the cestuis que vie, upon trusts to be subsequently declared.

(*b*) See supra, p. 335, n. (*b*).

Peculiarity of language occasioned by the property being held pur auter vie.

(*c*) The property settled, being in this case freehold pur auter vie, can be limited to the trustees, "*their executors and administrators;*" which is obviously a great convenience, both with regard to the declaration of the trusts, and to future dealings under the trusts declared. If the land settled be freehold or copyhold of inheritance, the limitation must, of course, be to the trustees and "their heirs;" which will necessitate the substitution of "heirs" for "executors and administrators" throughout the deed whenever the land is spoken of, and will also require some slight alteration in the language of the trusts of the settlement. See infra, Precedent XI.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

assigns, for and during the lives of the said X., Y., and Z., and the lives and life of the survivors and survivor of them, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained or referred to of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, he the said A. B., with the privity and consent of the said C. D., (testified as aforesaid) (*d*), hath assigned, and by these presents doth assign, unto said E. F. and G. H., their executors, administrators, and assigns, ALL THAT the equal moiety or half part of him the said A. B. of and in the said policies of assurance, hereinbefore particularly mentioned, on the lives of the said X., Y., and Z., respectively, and of and in all and every the bonuses and additions, sum and sums of money to become payable or to be received under or by virtue of the same respectively, and the full benefit thereof, AND ALL THE ESTATE, &c.: TO HAVE, HOLD, RECEIVE, AND TAKE the said equal moiety or half part, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained or referred to of and concerning the same; AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, do and shall stand and be seised and possessed of and interested in the said moieties, hereinbefore released and assigned respectively, of the said hereditaments, policies of assurance, monies, and premises, IN TRUST for the said A. B., his executors, administrators, and assigns, in the meantime, and until the said intended marriage shall be solemnized; AND FROM AND AFTER the so-

Witnesseth, further, assignment to the trustees;

—of the husband's interest in the policies of assurance.

Habendum upon trusts to be subsequently declared.

Declaration of trust;

—for the husband till marriage;

—and after

(*d*) See supra, p. 335, n. (*b*).

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

lemnization thereof, UPON TRUST, that the said E. F. and G. H. and the survivor of them, his executors or administrators, do and shall, at any time or times, with the consent in writing of the said A. B. and C. D., during their joint lives, and after the death of such one of them as shall first die, with the consent in writing of the survivor of them, and after the death of the survivor of them, at the discretion of the said E. F. and G. H., or the survivor of them, his executors or administrators, and either alone or in conjunction with the person or persons for the time being entitled to the other moiety of the same premises, absolutely sell and dispose of the moieties hereinbefore released and assigned respectively, or expressed or intended so to be, of the said monies, hereditaments, policies of assurance, and premises, either entirely and altogether, or in parcels, and either by public auction or private contract, for such price or prices as the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall think reasonable, with power to buy in the said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to re-sell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively; And also, with full power to insert any such special or other clauses or stipulations in any contract for or conditions of sale, either as to title or otherwise, as they the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall think fit (*e*); And do and shall enter into all such other arrangements as the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall, in their or his discretion, think fit, in relation to any sale or sales of the said premises, or any part thereof; AND DO AND SHALL receive the purchase-money to arise from any such sale or sales as aforesaid, and by and out of the same pay all

marriage, upon trust for sale.

Trusts of the money to arise from the sale;

(*e*) See the notes ante, Vol. 3, pp. 290—292, Lewin's Law of Trusts, chap. xix.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

the expenses attending such sale or sales as aforesaid, or otherwise incurred in the execution of any of the trusts or powers hereby declared; AND DO AND SHALL hold all the residue of the same purchase-money, and also the rents, issues, and profits of the same moieties and premises in the meantime, and until the same shall be sold, (but subject and without prejudice to the trusts in these presents declared of the same rents, issues, and profits), upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, declarations, and agreements, as are or shall be expressed and declared of and concerning the same, in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between [*parties—settlement of even date*]: AND IT IS HEREBY agreed and declared, that, in the meantime and until the said moieties hereinbefore released and assigned respectively as aforesaid, shall be sold, the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall, by and out of the rents, issues, and profits of the said moiety of the said leasehold premises, pay one equal moiety or half part of the rent reserved in and by the said indenture of the —— day of ——, or to be reserved in and by any renewed lease of the same premises, and also one equal moiety or half part of the annual premiums and other sums of money which shall from time to time become payable for keeping on foot the said policies of assurance on the lives of the said X., Y., and Z., respectively, and for keeping on foot any policy or policies of assurance which may hereafter be effected on the same lives or any of them, or any other life or lives for which any renewed lease or leases of the said hereditaments may be granted; AND WHEN AND SO OFTEN (*f*) as the same may be required by the

—and of the rents and profits till sale, (subject to subsequent trusts declared of the rents and profits);

—declared by reference to a settlement of even date.

Rents and profits, until sale, to be first applied in payment of a proportion of the rent reserved on the lease, and of the premiums on the policies.

Trustees to renew lease when necessary, and

(*f*) When renewable leaseholds are made the subject of settlement, it is expedient to provide for their renewal. If the settlement contain no direction to renew, a trustee or tenant for life is not bound to renew. (*Nightingale* v. *Lawson*, 1 Bro. C. C. 440, 443). But whether the settlement do or do not contain a direction for renewal, if a trustee or a tenant

As to the renewal of renewable leaseholds comprised in settlements;

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

dropping of any life or lives upon which the said leasehold hereditaments now are or hereafter shall be holden, use their or his best endeavours to obtain, and concur with the person or persons for the time being entitled to the other moiety of the same premises, in obtaining a renewed lease or leases of the same premises, on the accustomed and reasonable terms, in order that, until the premises shall be sold, the

make surrenders, and do all necessary acts.

---

for life renew, he cannot hold the renewed lease for his own benefit; it becomes subject to all the equities affecting the original lease. (*Nightingale* v. *Lawson*, ubi supra; *Holt* v. *Holt*, 1 Ch. Ca. 191; *Pierson* v. *Shore*, 1 Atk. 480; *Edwards* v. *Lewis*, 3 Atk. 538; *Taster* v. *Marriott*, Amb. 668; *Rawe* v. *Chichester*, Id. 715; *Addis* v. *Clement*, 2 P. W. 459; *Stone* v. *Theed*, 2 Bro. C. C. 248; *Killick* v. *Fleckney*, 4 Bro. C. C. 161; *Parker* v. *Brooke*, 9 Ves. 583; *Collet* v. *Hooper*, 13 Ves. 260; *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; *Fitzroy* v. *Howard*, 3 Russ. 225; *Mulvaney* v. *Dillon*, 1 Ball & Bea. 409; *Winslow* v. *Tighe*, 2 Ball & Bea. 196; *Lee* v. *Vernon*, 5 Bro. P. C. 18; *Buckley* v. *Lanauze*, 1 Lloyd & Goold, temp. Plunk. 327). See, too, the case of *Webb* v. *Lugar*, 2 You. & C. 247, in which a lease of tithes was left in trust as to part of the tithable land, to keep it tithe free. And if a tenant for life sells the right of renewal, the purchase-money is subject to the estates of the settlement; (*Owen* v. *Williams*, Amb. 734); and the renewed lease is still subject to the former equities, although the original lease may have expired before the renewal; (*Pickering* v. *Vowles*, 1 Bro. C. C. 197; *Moody* v. *Matthews*, 7 Ves. 185; *James* v. *Deane*, 11 Ves. 383; *S. C.* 15 Ves. 236; *Jackson* v. *Welsh*, 1 Lloyd & Goold, temp. Plunk. 346); or, although the new lease is not to commence till after the expiration of the old one; (*Rakestraw* v. *Brewer*, 2 P. W. 511; *Taster* v. *Marriott*, Amb. 688); or be obtained from a superior landlord. (*Giddings* v. *Giddings*, 3 Russ. 241). But the rule does not extend to purchases of the reversion by trustees of an existing lease. (*Norris* v. *Le Neve*, 3 Atk. 38; *Randall* v. *Russell*, 3 Mer. 190; *Hardman* v. *Johnstone*, Id. 352; see, however, *Fosbrooke* v. *Balguy*, 1 My. & K. 226).

Directions to renew implied, when.

A trust for renewal may be implied from the general language of the settlement. (*Lord Monfort* v. *Cadogan*, 17 Ves. 488; *S. C.* 19 Ves. 635; *Capel* v. *Wood*, 4 Russ. 500; *O'Ferrall* v. *O'Ferrall*, 1 Lloyd & Goold, temp. Plunk. 79). But, of course, the draftsman will give explicit directions on the subject.

The propriety of a discretion to renew leases.

In all cases, however, a discretion as to renewal should be reposed in the parties by whom it is to be effected; for if it be made absolutely incumbent on them to renew, they may be compelled to pay unreasonable fines. And a discretion to renew is not considered an arbitrary discretion, but one which is to be exercised to obtain a renewal, if reasonable terms can be had. (*Lord Milsington* v. *Earl Mulgrave*, 3 Madd. 491; 5 Madd. 472). See further on this subject, Lewin's Law of Trusts, chap. xvii. sect. 1.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

said premises may be held for the lives of three persons, and the lives and life of the survivors or survivor of them, and for that purpose do and shall, from time to time, make or concur in making such surrender of the lease, for the time being subsisting in the same premises, and do all such other acts as shall be necessary and requisite in that behalf; AND DO AND SHALL, on every such renewal, pay and apply the monies to be received by them or him under or by virtue of the policy of assurance, for the time being subsisting upon the life which shall have dropped, or a competent part thereof, in or towards the discharge of the fine which shall be required upon such renewal, and the expenses of such renewal, and in or towards the effecting of a policy or policies of assurance on the new life or lives for which such renewed lease shall be granted, so that the lives of all the persons for whose lives the said leasehold hereditaments shall for the time being be holden may always be assured in the sum of £—— each; AND DO AND SHALL pay the surplus (if any) of the said monies to the person or persons for the time being entitled to the annual rents and profits of the said moiety hereinbefore released of the said leasehold premises; AND IF the said monies shall be insufficient to pay the said fines and expenses, and the cost of effecting such assurance as aforesaid, do and shall pay and apply such part and parts of the annual rents, issues, and profits of the said moiety of the said leasehold premises, as shall be required for the purpose of paying the residue of the fine, expenses, and costs aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case from any cause the money for the time being wanted to pay the fines and other expenses of renewal, shall not be produced by the ways and means aforesaid, at the times when the same shall be wanted, it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, to raise such sum or sums of money as for the time being shall be wanted for the purposes aforesaid, and the costs of raising the same, by mortgage of the said premises hereby released and assigned respectively, or expressed and intended so to be, or any of them: AND IT IS HEREBY agreed and declared between and by the

The monies to be received from any policy to be applied for payment of renewal fines and expenses, and assuring the lives of the cestuis que vie;

—and the surplus to the persons for the time being entitled to the rents and profits;

—deficiences to be paid out of the rents and profits.

Power to the trustee to raise monies for renewal of lease by way of mortgage.

Clause exone-

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

parties to these presents, that no mortgagee shall be bound or concerned to see as to the necessity or propriety of raising money by mortgage, or to see that no more is raised than ought to be raised: PROVIDED ALWAYS nevertheless, and the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, in manner following, (that is to say), that, notwithstanding the trusts and powers hereinbefore contained, as to raising and paying the fines and expenses of renewal and insurance, in case the said intended marriage shall take effect, he the said A. B. shall and will, during his life, or until the said undivided moiety and premises shall be sold, pay the share, payable in respect of the same moiety, of the rent reserved by the said recited lease or any renewed lease, and the expense of observing and performing the covenants in any such lease, and also of the fines and other expenses of renewal, and also of the premiums and other expenses of keeping up such assurances as aforesaid; And shall and will pay off and discharge any mortgage or mortgages which may be made by the trustees or trustee of these presents in the lifetime of him the said A. B. under the power in that behalf hereinbefore contained (*g*): PROVIDED ALSO nevertheless, that the said E.

Relieving mortgagees from seeing to the necessity of the money being raised.

Covenant by the husband, notwithstanding previous provisions, to pay rent and premiums and costs of renewal.

Trustees not to

As to the manner of raising, and the apportionment of the expenses of renewal.

(*g*) The settlement should always declare how the fines and expenses of renewal are to be raised, although it seems to be now settled that the expenses must be borne by the tenant for life and those in remainder, in the proportion of the benefit which they will by calculation derive from such renewals. (*Allan* v. *Backhouse*, 2 Ves. & B. 65; *Playters* v. *Abbott*, 2 My. & K. 97; *The Earl of Shaftesbury* v. *The Duke of Marlborough*, Id. 111; *Reeves* v. *Creswick*, 3 You. & C. 715). It has been decided, that, where the tenant for life is a cestui que vie, and renews the lease of his own accord, the expense of the renewal is a charge on the estate for his benefit. (*Adderley* v. *Clavering*, 2 Bro. C. C. 659; *S. C.* 2 Cox, 192). As to the principle of contribution in such a case, where it is necessary to raise the money by mortgage, and the manner in which the security should be made, see *Reeves* v. *Creswicke*, 3 You. & C. 715. See further, Lewin's Law of Trusts, chap. xvii. sect. 2.

It is always desirable to insert an express power of raising by mortgage any money which may be wanted, together with a clause discharging a mortgagee from the duty of seeing to the necessity of the money being

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

F. and G. H., their executors or administrators, or any of them, shall not be chargeable for a breach of trust by reason of any omission or neglect to renew the said lease, or to keep up such insurances as aforesaid, or to sue the said A. B., his heirs, executors, or administrators, on the covenant hereinbefore on his part contained (*h*): PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, at any time or times after the solemnization of the said intended marriage, before the said moiety hereinbefore released, or expressed and intended so to be, of the said parsonage, glebe houses, lands, tithes, and hereditaments, shall be sold, (but nevertheless with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life), by any indenture or indentures to be sealed and delivered by them the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, in the presence of and attested by two or more credible witnesses, to demise or lease all or any part or parts of the said moiety hereinbefore released, or expressed and intended so to be, of the said parsonage, glebe house, lands, tithes, and hereditaments, with the appurtenances, to any person or persons, for any term or number of years not exceeding twenty-one years, to take effect in possession and not in reversion or by way of future interest, so as there shall be reserved on every such demise or lease the best or

be responsible for non-renewal.

Power of leasing until the freeholds be sold.

raised. Such clause of exoneration may be either inserted as in the text, or be woven into the ordinary trustees' receipt clause.

The effect of the covenant in the text is to throw the whole expense of renewal on the settlor, notwithstanding the previous clauses; in ordinary cases it should be omitted.

(*h*) If trustees are directed to renew, and fail to do so, they are liable to make good the loss occasioned by the omission; (*Lord Montford* v. *Lord Cadogan*, 17 Ves. 488; *S. C.* 19 Ves. 635); and so, too, in the case of a tenant for life. (*Colegrave* v. *Manby*, 6 Madd. 72; *S. C.* 2 Russ. 638; *Bennett* v. *Colley*, 5 Sim. 181). It seems fair, however, to protect the trustees from liability in respect of such an omission, as they may not be so situated as to know when the lives drop.

Trustees directed to renew leaseholds, are liable for omission.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be demised or leased, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof, and so as there be contained in every such demise or lease a condition of re-entry for nonpayment of the rent or rents thereby to be respectively reserved, and so as the lessee or lessees do execute a counterpart thereof respectively, and do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved, and be not by any clause or words therein to be contained made dispunishable for committing waste, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or of the trustees or trustee for the time being acting in the execution of the trusts of these presents, for any sum or sums of money payable to them or him for the purchase money of the said premises, or by any mortgagee thereof, or for any other sum or sums payable to them or him under or by virtue of these presents, or in the execution of any of the trusts or powers hereof, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the same respectively, or so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received; and that the purchaser or purchasers, mortgagee or mortgagees, or other person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received (*i*): [*Power to appoint new trustees,*

Trustees' receipt clause.

Power to appoint new trustees.

(*i*) See supra, p. 324, n. (*r*); supra, p. 341, n. (*f*).

see supra, page 324]: AND THE SAID A. B., doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors, administrators, and assigns, in manner following, (that is to say), THAT for and notwithstanding any act, deed, matter, or thing whatsoever by him the said A. B., or any of his ancestors, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, the said indenture of lease of the —— day of ——, at the time of the sealing and delivery of these presents, is a good and effectual lease of the said hereditaments and premises therein comprised, and now is in full force, unforfeited, unsurrendered, and in nowise become void or voidable; AND THAT all and singular the rents, covenants, conditions, and agreements in and by the said indenture of the —— day of ——, reserved and contained, and on the part of the lessee, his executors, administrators, and assigns, to be paid, observed, and performed, up to the day of the date of these presents, have been paid, observed, and performed; AND THAT the said policies of assurance, at the time of the sealing and delivery of these presents, are good, valid, and effectual policies of assurance for the several sums hereinbefore respectively mentioned, and are in full force, unforfeited, unsurrendered, and in nowise vitiated or become void or voidable; AND THAT, for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said A. B. now hath in himself good right, full power, and lawful and absolute authority, to grant, release, and assign the said moieties, hereinbefore granted and released and assigned respectively, of the said hereditaments, policies of assurance, monies, and premises, to and to the use of the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, declarations, and agreements hereinbefore expressed, declared, and contained or referred to, of and concerning the same respectively, according to the true intent and meaning of these presents; AND THAT all and singular the said moieties and premises shall and may, from time

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

Covenants by the husband:

—that the lease is valid;

—that the rents and covenants have been paid and performed;

—that the policies of assurance are good;

—for right to convey and assign;

—for quiet enjoyment;

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

to time, and at all times hereafter, remain, continue, and be to and to the use of the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, declarations, and agreements hereinbefore expressed, declared, and contained or referred to, of and concerning the same respectively, and shall and may peaceably and quietly be held and enjoyed accordingly, without any let, suit, trouble, denial, eviction, ejection, disturbance, interruption, claim, or demand whatsoever, of or by him the said A. B., his heirs, executors, or administrators, or any other person or persons lawfully or equitably claiming or to claim, by, from, under, or in trust for him or them, or by, from, or under any of his ancestors; AND THAT free and clear, and freely and clearly acquitted, exonerated, released, and for ever discharged, or otherwise by him the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other estates, titles, troubles, charges, and incumbrances whatsoever, either already had, made, committed, done, executed, occasioned, or suffered, or hereafter to be had, made, committed, done, executed, occasioned, or suffered by him the said A. B., his heirs, executors, or administrators, or any other person or persons lawfully claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under any of his ancestors; AND FURTHER, THAT he the said A. B., his heirs, executors, and administrators, and all and every other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, interest, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said moieties and premises hereinbefore released and assigned respectively, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said A. B., his heirs, executors, or administrators, or by, from, or under any of his ancestors, shall and will, from time to time and at all times after the

—free from incumbrances;

—and for further assurance.

CONVEYANCE, IN CONTEMPLATION OF MARRIAGE, IN TRUST FOR SALE.

solemnization of the said intended marriage, at the request of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or any of the parties interested in the premises, but at the proper costs and charges of him the said A. B., his executors, administrators, or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely conveying, assigning, and assuring of the said moieties and premises hereinbefore released and assigned respectively, or expressed and intended so to be, and each of them, and every part and parcel thereof, to and to the use of the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore declared and contained or referred to of and concerning the same, according to the true intent and meaning of these presents, as by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or any of the parties interested in the premises, their or any of their counsel in the law, shall be reasonably devised or advised and required. IN WITNESS &c.

V.

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

SETTLEMENT *on* MARRIAGE, *of* SUMS *of Money secured on* MORTGAGE, *and of a* SUM *payable under the Trusts of a* TERM *of Years, and which have been assigned to the Trustees by* DEED *of* EVEN DATE (*a*); *of* MONIES *to be produced by the* SALE *of* REAL ESTATE *conveyed to the Trustees by another* DEED *of* EVEN DATE, *in* TRUST *for* SALE (*b*); *of an* ANNUAL SUM COVENANTED *to be paid until the Money raisable under the Term shall be paid; and of the* RENTS *and* PROFITS *of the* REAL ESTATE *until* SALE. USUAL TRUSTS *for Investment, and for the Benefit of the Husband, Wife, and Children.* IF NO CHILDREN *become* ENTITLED, *the Husband's Funds revert to himself, the Wife's to herself or her Appointees or Next of Kin, exclusive of her Husband.* USUAL TRUSTEE CLAUSES.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; A. D., of &c., of the second part; C. D., of &c., [*intended wife*], (one of the daughters of the said A. D.), of the third part; and E. F., of &c., and G. H., of &c., [*trustees*], of the fourth part:

Recital of the husband's being entitled to a sum secured on a mortgage of leaseholds;

WHEREAS the said A. B. is entitled to a sum of £——, with interest for the same after the rate of —*l.* per cent. per annum, from the —— day of —— last, secured by an indenture bearing date the —— day of ——, and made, or

(*a*) The reasons for assigning these monies to trustees by deed of even date, instead of by the settlement itself, are stated supra, p. 333, n. (*a*).

(*b*) The reasons for making this conveyance by deed of even date are stated supra, p. 342, note.

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

expressed to be made, between [*parties*], upon certain leasehold hereditaments, and a policy of insurance thereon against loss by fire in the said indenture particularly mentioned, and which sum of £—— and interest, and the securities for the same, by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], became vested in the said A. B. (*c*); AND WHEREAS the said A. B. is also entitled to a sum of £——, with interest thereon at the rate of —*l.* per cent. per annum from the —— day of —— last, secured by an indenture of release bearing date the —— day of ——, grounded on a lease for a year, and made, or expressed to be made, between [*parties*], on certain freehold hereditaments in the said indenture of release particularly mentioned, and which sum of £—— and interest, and the securities for the same, by divers mesne assignments and acts in the law, and ultimately by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], became vested in the said A. B.; AND WHEREAS the said A. B. is entitled to a sum of £——, with interest thereon at the rate of —*l.* per cent. per annum from the —— day of —— last, secured by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], upon the life interest of the said —— in the dividends, interest, and annual produce of certain trust monies, stocks, funds, and securities therein mentioned, and also upon certain policies of assurance on the life of the said ——, in the said indenture also particularly mentioned; AND WHEREAS the said A. B. is also

—and to another sum secured on a mortgage of freeholds;

—and to another secured on a life interest in personalty and a policy of assurance;

—and to a

(*c*) In marriage settlements, in which monies have been assigned to trustees by deeds of even date, upon trusts to be declared by the settlement, it is usual merely to state the debt and security, and that they became vested in the settlor, instead of setting forth the recitals at length; and such a statement is quite sufficient, because the only object is to declare the trusts of the fund, and with the history of it the settlement has nothing to do. If the security has been made directly to the settlor, it may be recited in the usual manner; but wherever there have been transfers, or other intermediate dealings, the course adopted in the text is the most convenient. See the preceding and two following recitals.

In marriage settlements, it is not generally necessary to narrate the history of the funds to be settled.

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

entitled to one equal moiety or half part of the parsonage, glebe, houses, lands, and tithes of ——, in the county of ——, for an estate granted by an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], for the lives of X., Y., and Z., and the lives and life of the survivors and survivor of them, and is also entitled to one equal moiety or half part of three several policies of assurance on the lives of the said X., Y., and Z., respectively, effected with the —— Office for the sum of £—— each (*d*); AND WHEREAS the said C. D. is, under and by virtue of a deed-poll bearing even date with, but executed before these presents, and under the hand and seal of the said A. D., entitled to a sum of £——, thereby appointed to her the said C. D., and to be paid to her, her executors, administrators, or assigns, on the death of the survivor of the said A. D. and his father (*e*); AND WHEREAS a marriage has been agreed on, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, on the treaty for the said intended marriage, it was agreed that the said A. B. should assign the said several sums of £——, £——, and £——, to which he is entitled as aforesaid, and the interest due and to grow due on the same respectively, to the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively, and should also assign, convey, and assure the securities for the same sums respectively to the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, according to the nature thereof respectively, subject to the equity of redemption thereof now subsisting in the same respectively; AND ON THE SAID TREATY it was also agreed that the said A. B. should convey, assign, and assure the said moiety of the said parsonage, glebe, houses, lands, and tithes, and of the said

moiety of a lease for lives and of policies of assurance on the lives of the cestuis que vie;

—of the wife's being entitled in reversion to a sum raisable under the trusts of a term;

—of the agreement for the marriage;

—of the agreement to assign the mortgage debts and securities to the trustees, upon the trusts subsequently declared;

—and to convey and assign the moiety of the lease and policies to the trustees, in

(*d*) See supra, n. (*c*).

(*e*) See supra, n. (*c*).

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

policies of assurance on the lives of the said X., Y., and Z. respectively, to the said E. F. and G. H., their executors, administrators, and assigns (*f*) respectively, upon trust to sell the same and to stand possessed of the money arising from such sale, and also of the rents and profits of the same premises until sold, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared of and concerning the same; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the said C. D. should assign the said sum of £——, to which she is entitled as aforesaid, and all interest to grow due for the same unto the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained of and concerning the same; AND THAT the said A. D. should enter into such covenant with the said E. F. and G. H., their executors and administrators, for payment of an annual sum of £——, for and in respect of the said sum of £——, until the same shall be payable and paid (*g*) as is hereinafter contained, and that such annual sum should be held, paid, and applied by the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with,

trust to sell and hold the purchase-monies on the trusts to be subsequently declared;

—to assign the wife's reversionary sum to the trustees, upon trusts to be subquently declared;

—and that her father should covenant for the payment of an annual sum by way of interest, till the reversion fall into possession;

(*f*) When the estate is freehold or copyhold of inheritance, it will, of course, have been conveyed to the trustees and "their heirs," which will require a slight alteration in the trusts of this settlement; because, until the estate has been sold, and the money invested, the heirs of the last surviving trustee, instead of his executors or administrators, may be the trustees of the estate or of the purchase-money. (See supra, p. 344, n. (*c*)). The trust, however, for investment of the purchase-money will be to invest in the names or name of the trustees, or the survivor, or the *executors or administrators* of the survivor, and then, the subsequent trusts will run in the usual way, referring throughout to the executors or administrators, and not to the heirs.

Variation required if the estate to be sold had been freehold or copyhold inheritance.

(*g*) Such an annual sum as this is often inaccurately termed interest, which it manifestly cannot be; as interest can only arise on a sum of money, either from the time it has been lent, or from the time at which it becomes payable.

Annuity agreed to be paid till a portion becomes payable, is not interest.

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained of and concerning the same; AND WHEREAS, in pursuance of the said agreements, by an indenture bearing even date with, but executed before the execution of these presents, and made, or expressed to be made, between [*parties*], the said A. B., with the privity of the said C. D., (testified as therein mentioned), hath assigned unto the said E. F. and G. H., their executors, administrators, and assigns, the said several mortgage sums or debts of £——, £——, and £——, and the interest now due and henceforth to become due for the same respectively, To hold the same unto the said E. F. and G. H., their executors, administrators, and assigns, in trust for the said A. B., his executors, administrators, and assigns, in the meantime and until the said intended marriage shall be solemnized, and after the solemnization thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed or declared of and concerning the same, in and by an indenture therein mentioned to be already prepared and engrossed, and as bearing, or intended to bear, even date with the indenture now in recital, and as made, or intended to be made, between the several persons therein mentioned, being the same several persons as are parties to these presents, and meaning thereby this present indenture; AND by the said indenture now in recital, the said A. B. hath assigned, granted, released, conveyed, and assured the said hereditaments, interest, dividends, annual produce, policies of assurance, and all other the securities for the said principal monies and interest unto the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, according to the nature thereof respectively, subject to the equity of redemption now subsisting in the same premises respectively; AND by the said indenture now in recital, the said C. D., with the privity of the said A. B., (testified as therein mentioned), hath assigned unto the said E. F. and G. H., their executors, administrators, and assigns, the said sum of £——, to which the said C. D. is entitled as afore-

—of the assignment to the trustees:

—by the husband of the mortgage debts,

—and securities;

—and by the wife, of her reversionary sum;

said, and the interest and annual produce to grow due or arise from the same, To hold the same unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime and until the solemnization of the said intended marriage, and from and after the solemnization thereof, Upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are declared and contained of and concerning the same in and by the said indenture thereinbefore mentioned of even date with the indenture now in recital, meaning thereby this present indenture; AND WHEREAS, in further pursuance of the said agreements, by an indenture of release and assignment, bearing even date with, but executed before the execution of these presents, grounded so far as the same operated as a release on a lease for a year, and made, or expressed to be made, between [*parties*], the said A. B., with the privity of the said C. D., (testified as therein mentioned), hath granted, released, and confirmed unto the said E. F. and G. H., their executors, administrators, and assigns, the equal moiety of him the said A. B. of and in the said parsonage, glebe, houses, lands, tithes, and hereditaments comprised in the said indenture of the —— day of ——, To hold the same unto and to the use of the said E. F. and G. H., their executors, administrators, and assigns, for the lives of the said X., Y., and Z., and the lives and life of the survivors and survivor of them, upon the trusts thereinafter mentioned and hereinafter referred to; AND by the said indenture now in recital, the said A. B., with the like privity of the said C. D., hath assigned unto the said E. F. and G. H., their executors, administrators, and assigns, the equal moiety of him the said A. B. of and in the said policies of assurance on the lives of the said X., Y., and Z., and the monies to become payable under or by virtue of the same, To hold the same unto the said E. F. and G. H., their executors, administrators, and assigns, upon the trusts thereinafter mentioned and hereinafter referred to; AND by the said indenture now in recital it is declared,

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

—of the conveyance by the husband, to the trustees, of the moiety of the lease for lives;

—and of the policies of assurance;

—upon trust for

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

sale, the trusts of the purchase-money, and of the surplus rents and profits, being declared by reference to the present settlement.

that the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be seised and possessed of and interested in the said moieties, thereinbefore released and assigned respectively, of the said leasehold premises and policies of assurance respectively, IN TRUST for the said A. B., his executors, administrators, and assigns, in the meantime until the said intended marriage shall be solemnized, and from and after the solemnization thereof, Upon trust that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, shall, with such consent, or at such discretion as in the said indenture now in recital is mentioned, sell the same premises, and stand possessed of and interested in the monies to arise from the sale thereof, (after deducting expenses), and also, of and in the rents, issues, and profits of the same moiety of the said leasehold premises, in the meantime and until the same shall be sold, (subject and without prejudice to the trusts in the said indenture now in recital declared of the said rents, issues, and profits, for renewal of the lease of the said leasehold hereditaments, and for keeping the lives of the cestuis que vie for the time being of the said leasehold hereditaments duly insured), upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, declarations, and agreements, as are or shall be declared of and concerning the same in and by the indenture therein mentioned to be already prepared and engrossed, and bearing, or intended to bear, even date with the indenture now in recital, and made, or intended to be made, between the same persons as are parties to these presents, and meaning thereby this present indenture. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreements, and in consideration of the said intended marriage, the said A. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, that in case the said intended marriage shall take effect, he the said A. D., his heirs, executors, or administrators, shall and will in the meantime, and until the said sum of £—— [*the wife's reversionary sum*] shall become payable

Witnesseth, covenant by the wife's father to pay the trustees an annual sum till her reversionary interest fall into possession.

and be paid, pay or cause to be paid an annual sum of £——(*h*) unto the said E. F. and G. H., their executors, administrators, or assigns, by equal half-yearly payments, on the —— day of—— and the —— day of —— in every year, until the whole of the said sum of £—— shall be paid, the first of such half yearly payments to be made on the —— day of —— next, unless the said sum of £—— shall have been previously paid. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreements, and in consideration of the said intended marriage, it is hereby agreed and declared between and by the parties to these presents, that the said E. F. and G. H., their (*i*) executors, administrators, and assigns, shall stand possessed of and interested in the said sums of £——, £——, and £——, [*the mortgage sums*], and the interest for the same respectively, and also of and in the monies to arise from the sale of the said moiety of the said parsonage, glebe, houses, lands, and tithes, and of the policies of assurance on the lives of the said X., Y., and Z.; And also of and in the said sum of £——, [*the wife's reversionary sum*], and interest, FROM AND AFTER (*k*) the solemnization of the said intended marriage, UPON TRUST, that the said E. F. and G. H., and the survivor of them, and the (*l*) executors and administrators of such survivor, do and shall either permit and suffer the said mortgage debts or sums of £——, £——, and £——, or any of them, or any part thereof respectively, either to remain upon the securities upon which the same are now placed, or do and shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of them the said E. F. and G. H.,

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

Witnesseth, further declaration of trusts of the funds.

Trusts for investment and varying securities.

(*h*) See supra, p. 359, n, (*g*).

(*i*) If the land conveyed in trust for sale had been freehold, the word "heirs" would have been necessary here. (See supra, p. 359, n. (*f*)).

(*k*) The trusts until marriage have been declared in each case by the deed of even date; otherwise they must have formed the first trusts here. See infra, Precedent VIII.

(*l*) See supra, n. (*i*).

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

or the survivor of them, or the executors or administrators of such survivor, call in and compel payment of the same sums or any of them, or any part thereof respectively, and do and shall receive the monies arising from the sale of the said moiety of the said parsonage, glebe, houses, lands, and tithes, and other the premises directed to be sold, and also the said sum of £—— [*the wife's reversionary sum*], when the same shall become payable; And do and shall (with such consent or at such discretion as aforesaid,) lay out and invest the monies so to be called in and received respectively as aforesaid, in the names or name of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland (*m*)), with power for the said E. F. and G. H. and the survivor of them, and the executors or administrators of such survivor, (with such consent or at such discretion as aforesaid), to alter, vary, and transpose the said stocks, funds, and securities into or for other stocks, funds, and securities of the same or a like nature (*n*): AND IT IS HEREBY further agreed and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, do and shall stand and be possessed of and interested in the said sums of £——, £——, £——, and £——, and the monies to arise from the sale aforesaid, and the stocks, funds, and securities in or upon which the same may be laid out and invested, and the interest, dividends, and annual produce thereof, (including the said annual sum of £—— to be paid by the said A. D. in respect of the said sum of £——, till the same shall become payable and be paid), UPON TRUST that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall pay the interest, dividends, and annual produce of the same trust monies, stocks, funds, and securities to, or permit the same to be re-

Declaration of the beneficial trusts;

—for the husband for life;

(*m*) See supra, p. 312, n. (*e*). (*n*) See supra, p. 313, n. (*f*).

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

ceived by, the said A. B. and his assigns during his life, AND AFTER his decease to or by the said C. D. in case she shall survive the said A. B., and her assigns, during her life, AND AFTER the decease of the survivor of them the said A. B. and C. D., do and shall stand and be possessed of and interested in all and singular the same trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for &c.: [*for the children as the husband and wife or the survivor shall appoint, and, in default of appointment, for children equally, see supra pp.* 317, 318.—*Hotchpot clause, supra, p.* 319.—*Advancement clause, supra, p.* 319.—*Maintenance and accumulation clauses, supra, pp.* 320, 321]: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that in case there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry (*o*), the said E. F. and G. H., their executors, administrators, and assigns shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained (*p*), upon the trusts following, (that is to say), AS TO THE SAID mortgage debts or sums of £——, £——, and £——, and the monies to arise from the sale aforesaid, and of the stocks, funds, and securities in or upon which the same or any of them or any part thereof respectively shall be laid out or invested, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the powers or trusts herein contained, from and after the death of the said C. D., and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the said A. B., his executors, administrators, and assigns: AND AS TO THE SAID sum of £——, [*the wife's reversionary sum*], and the stocks, funds, and securities in or upon which the same

—for the wife for life;

—and after the death of husband and wife for the children, with usual clauses and powers.

In default of children, subject to the wife's life interest, the husband's funds to belong to him;

(*o*) See supra, p. 322, n. (*n*).

(*p*) See supra, p. 322, n. (*o*).

OF MONIES OUTSTANDING ON SECURITIES AND TO ARISE FROM THE SALE OF REAL ESTATE.

may be laid out or invested, and the interest, dividends, and annual produce thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained, Upon the trusts following, (that is to say), [*the same trusts as supra, p. 322*]: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that, in the meantime, and until the said moiety of the said leasehold premises shall be sold, in pursuance of the trust in that behalf in the lastly hereinbefore recited indenture of even date with these presents contained, the said E. F. and G. H., their (*q*) executors, administrators, and assigns, do and shall pay and apply the annual rents, issues, and profits of the said undivided moiety, (subject and without prejudice to the trusts declared thereof by the same indenture of even date herewith), to the persons and in manner to whom and in which the interest of the money to arise by the sale thereof would for the time being be payable and applicable under these presents, in case the same premises had then been sold, and the purchase money laid out or invested: [*Trustees' receipt clause, supra, p. 323 (r).—Power to appoint new trustees, supra, p. 324 (s).—Clauses for the indemnity and payment of trustees (t), supra, pp. 326, 327, inserting in the indemnity clause immediately before the words,* " for any other misfortune, &c." *the following words,* " for not proceeding upon any of the covenants or obligations contained in the said indentures by which the said mortgage debts or sums of £——, £——, and £——, are respectively secured, nor for omitting or neglecting to see that the policies of assurance hereinbefore mentioned are kept on foot, nor for any other omission or neglect in respect of the same securities, nor &c."]. IN WITNESS &c.

—and subject to the husband's life interest, the wife's funds to go as she shall appoint, or to her next of kin of her own blood.

Rents and profits of the real estate until sold to go as the interest of the monies arising from a sale.

(*q*) If the land conveyed in trust for sale had been freehold, the word "heirs" must have been used instead of "executors and administrators." See supra, p. 359, n. (*f*).

(*r*) See supra, p. 324, n. (*r*).

(*s*) See supra, p. 326, n. (*u*); p. 328, n. (*y*).

(*t*) See supra, p. 327, n. (*v*); p, 328, n. (*x*).

VI.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

SETTLEMENT *of* SHARES *in* MONIES *out on Mortgage, of a Sum of* STOCK, *and of a* REVERSIONARY *Interest in* STOCK *belonging to the* WIFE. A POLICY *of Assurance effected by the Husband on his own Life, and a* SUM *of* MONEY *which he* COVENANTS *his Representatives shall pay after his Death, are also settled by* REFERENCE *to the previous Trusts, with a Variation in the ultimate Trust.* TRUSTS *for the* SEPARATE USE *of the* WIFE *for Life, and, after her Death, for the* HUSBAND, *until he become* BANKRUPT *or* INSOLVENT, *or* ASSIGN *his Interest* (*a*), *or* MARRY *again.* USUAL TRUSTS *and Powers for the Benefit of* CHILDREN. SPECIAL TRUSTS *over in* DEFAULT *of* CHILDREN *entitled.* POWER *to the Wife, if she Survive, to* SETTLE PART *of the Funds on a* SECOND MARRIAGE. PROVISO, *that if the Husband in his Lifetime Pays to the Trustees the Sum assured on his Life, the* POLICY *shall belong to him.* COVENANTS *and* PROVISOES *as to the* POLICY *of Assurance.* COVENANTS *by Husband and Wife for the* SETTLEMENT *of* AFTER-ACQUIRED PROPERTY *of the Wife.* USUAL TRUSTEE CLAUSES.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended* Parties.

(*a*) Property cannot be settled upon a man or upon a feme sole in such a manner that the interest of the donee shall continue after bankruptcy or insolvency, or in such a manner as to take away the donee's power of alienation; (*Brandon* v. *Robinson*, 18 Ves. 429; *Ross* v. *Ross*, Property cannot be limited to a man or feme sole, so as to take away the

Recital of the

wife], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part: WHEREAS, under and by virtue

---

power of alienation or deprivation by act of law, unless there be a gift over in such event.

1 J. & W. 164; *Graves* v. *Dolphin*, 1 Sim. 66); but property not originally belonging to the donee may be so settled, that, on bankruptcy or insolvency, or on the donee's affecting or attempting to alienate it, it shall be divested out of him, and go over to some one else. (Id.; *Lockyer* v. *Savage*, 2 Stra. 497; *Dommett* v. *Bedford*, 3 Ves. 149; *S. C.* 6 T. R. 684; *Doe* d. *Mitchinson* v. *Carter*, 8 T. R. 57; *Wilkinson* v. *Wilkinson*, G. Coop. 259; *S. C.* 3 Swanst. 515; *King* v. *Robinson*, Wightw. 386; *Shee* v. *Hale*, 13 Ves. 404; *Cooper* v. *Wyatt*, 5 Madd. 482; *Lear* v. *Leggett*, 2 Sim. 472; *S. C.* 1 Russ. & My. 490; *Yarnold* v. *Moorhouse*, 1 Russ. & My. 364; *Lewes* v. *Lewes*, 6 Sim. 304; *Whitfield* v. *Prickett*, 2 Kee. 408). The clause which is intended to restrain the power of alienation should clearly provide in what events the man's interest is to go over, and should refer not only to voluntary alienation, but also to involuntary alienation by bankruptcy, insolvency, outlawry, or other act of law; for most of the cases have turned on the point, whether the words clearly indicated that the event which had happened was one on which the interest would go over. (See 2 Powell on Devises, by Jarman, 275). And it is clear, that, if the instrument creating the interest speak only of alienations generally, no forfeiture will be created by an involuntary alienation by act of law, but the property will go to the persons (as the assignees in bankruptcy for example) to whom that act would naturally carry it; and any discretion reposed in trustees to pay to a man as long as they please, is terminated by insolvency, *Green* v. *Spicer*, 1 Russ. & My. 395; *Piercy* v. *Roberts*, 1 My. & K. 4), or by bankruptcy; (*Snowdon* v. *Dales*, 6 Sim. 524); and the donee's interest passes to his assignees. (Id.)

The wife's property may be settled on marriage, so that the husband's interest shall determine on his bankruptcy or insolvency.

Most of the preceding cases arose on wills, and the donee's interest arising merely from the gift, the donor could annex any legal restraint he chose to his gift, on the ancient maxim *cujus est dare, ejus est disponere*. But the rule has been carried further: it is settled, that, notwithstanding the inchoate right which a husband by a contract of marriage acquires to his wife's property, a life interest in the property may be given to the husband, with a proviso that it shall determine on alienation, either voluntary or by act of law. (*Lockyer* v. *Savage*, 2 Stra. 497; *Ex parte Hinton*, 14 Ves. 498); or if the husband receive a portion with his wife, he may settle an equal amount of his own property in a similar manner. (*Ex parte Cooke*, 8 Ves. 353; *Ex parte Hodgson*, 19 Ves. 206; *Lester* v. *Garland*, 5 Sim. 205). And the widow of a bankrupt may, if he engage by marriage settlement to settle money which he falsely represented himself to possess, prove for the amount of her fortune paid to him. (*Ex parte Gardiner*, 11 Ves. 40). A letter is sufficient evidence of the debt. (*Ex parte Sitger re Man-*

And so, too, the husband's property settled in consideration of the wife's fortune paid.

of the trusts of a deed-poll bearing date the —— day of ——, and under the hands and seals of X. and Y., the said C. D. is entitled to the principal sum of £——, with interest for the same after the rate of —*l.* per cent. per annum, which said sum of £—— is part of the sum of £——, bearing interest at the rate aforesaid, and due or owing from —— to the said X. and Y., and secured to them by a mortgage of freehold and copyhold hereditaments at ——, in the county of ——, by indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], [*Similar recital showing that C. D. is similarly entitled to a sum of £——, part of a sum of £——, due to other trustees on another mortgage*]; AND WHEREAS the said C. D., under or by virtue of the will of her late mother ——, is entitled to one equal fourth part of the sum of

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

wife's being entitled to a part of a mortgage debt;

—and to a part of another mortgage debt;

—and to a reversionary interest in part of a sum of stock;

---

ton, Mont. 100); but it seems that parol evidence is not sufficient. (*Ex parte Baxter re Spurrier*, Mont. 135).

A husband, who does not receive a portion with his wife, cannot, on his marriage, settle any of his own property, so as to divest his own interest on bankruptcy, or, it is presumed, on any alienation by act of law. (*Higinbotham* v. *Holme*, 19 Ves. 88). But a recital in the settlement is not conclusive evidence of the property being the husband's, if the fact be otherwise; and, on proof, the settlement may be rectified. (*Higginson* v. *Kelly*, 1 Ball & Bea. 252; *Ex parte Verner*, Id. 230).

But the husband's other property cannot be so settled.

A bond or covenant given by the husband for the payment of a sum of money on his bankruptcy to trustees, upon trust for his wife and children, is void as against the assignees in bankruptcy; (*Murphy, a bankrupt*, 1 Sch. & Lef. 44; *Re Meaghan*, Id. 179; *Ex parte Hill*, 1 Cox, 300); unless so far as it has been given in consideration of the wife's fortune received. (*Ex parte Hill*, ubi supra; *Ex parte Cooke*, 8 Ves. 353; *Ex parte Young*, 3 Madd. 124; *S. C.* Buck, 179; *Re Meaghan*, ubi supra; *Ex parte Turpin re Brown*, 1 Dea. & Chit. 120; *S. C.* Mont. 443; *Ex parte Hooper re West*, 3 Dea. & Chit. 655; *Ex parte Shute*, Mont. & B. 385; *S. C.* 3 Dea. & Chit. 1). Such an obligation, however, is good against the husband. (*Assignees of Gardiner* v. *Shannon*, 2 Sch. & Lef. 228).

As to bonds and covenants by the husband to settle money on his bankruptcy.

The interest in the dividends received is applicable, in the first instance, to make up the entire sum secured, and then goes as directed by the settlement, the assignees taking the husband's life interest, if he have one. (*Ex parte Shute*, ubi supra; *Ex parte Turpin*, ubi supra). See, too, further on this subject, the cases collected in Chitty's Equity Index, tit. "Bankruptcy," xiii. 7.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

£——, —*l.* per cent. —— Annuities, standing in the names of ——, as executors of the said will, and which said fourth part will become transferable to the said C. D. on the decease of the survivor of —— and ——; AND WHEREAS the said C. D. is also possessed of and entitled to the sum of £——, —*l.* per cent. —— Bank Annuities, lately standing in her own name; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said marriage, it was agreed, that the said A. B. should effect a policy of assurance on his own life in the names of the said E. F., G. H., and I. K. (*b*), in the sum of £——, and should enter into such covenants respecting the same as are hereinafter contained, and that the said E. F., G. H., and I. K., their executors, administrators, and assigns, should stand possessed of and interested in the said policy of assurance, and of all sums of money to become payable under or by virtue of the same, upon the trusts, and under and subject to the powers, provisoes, declarations, and agreements hereinafter declared, and expressed or referred to and contained of and concerning the same; AND WHEREAS, upon the treaty for the said marriage, it was also agreed, that the said C. D. should transfer the said sum of £——, —*l.* per cent. —— Bank Annuities, and should assign the said sums of £—— and £——, [*the mortgage sums*], and the interest henceforth to accrue due on the same respectively, and the said one equal fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the dividends to accrue due on the same, after the same shall have become transferable to the said C. D., into the names of and unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and subject to the powers, provisoes, declarations, and agreements hereinafter declared of and concerning the same respectively; AND

—and to a sum of stock in her own name;

—of a marriage having been agreed on;

—of the agreement that the husband should insure his life in the trustees' names;

—and that the wife should transfer and assign her property above mentioned;

—and that the

(*b*) The policy of assurance, if made on the occasion, should always be made in the trustee's name, as the risk of forfeiture is thereby diminished. (See ante, Vol. 3, p. 91).

WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the said A. B. should enter into the covenant hereinafter contained for securing to the said E. F., G. H., and I. K., their executors, administrators, and assigns, the payment by the executors or administrators of him the said A. B. of the further sum of £——, with interest as hereinafter mentioned, to be held upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and expressed, or referred to and contained, of and concerning the same; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the said A. B. and C. D. should enter into such covenants as are hereinafter contained for the settlement of any other present or after-acquired property of the said C. D.; AND WHEREAS, in pursuance of the said agreement in this behalf, the said A. B. hath effected an assurance in the sum of £——, with the —— Life Assurance Company, on the life of him the said A. B., in the names of the said E. F., G. H., and I. K., by a policy of assurance bearing date the —— day of ——, numbered ——, and under the annual premium of £——; AND WHEREAS, in pursuance of the said agreement in this behalf, the said C. D., with the privity and approbation of the said A. B., (testified by his being a party to and executing these presents (*c*)), hath transferred into the names of the said E. F., G. H., and I. K., the said sum of £——, —*l.* per cent. —— Bank Annuities. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, she the said C. D., with the privity and approbation of the said A. B., (testified as aforesaid (*c*)), hath assigned, and by these presents doth assign, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, THE SAID several sums of £—— and £——, and all interest henceforth to accrue due on the same (*d*); AND

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

husband should secure the payment of a sum of money after his death, by covenant;

—and for the settlement of all other present or after-acquired property of the wife;

—of the husband's having insured his life in the trustees' names;

—of the wife's having transferred the stock which was in her name to the trustees.

Witnesseth, assignment by the wife to the trustees of her part of the mortgage debts, and of the reversionary sum of stock.

(*c*) See *supra*, p. 310, n. (*d*).

(*d*) There is no objection in this case to assign by the settlement itself Assigning

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

THE SAID one equal fourth part to which the said C. D. is entitled as aforesaid of the said sum of £——, —*l.* per cent. —— Bank Annuities, and all dividends to accrue due on the same, after the same shall, under the said will, have become transferable to the said C. D., AND the full benefit of all securities for the said principal sums and interest respectively, and for the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the dividends thereof, AND ALL THE ESTATE, &c.: TO HAVE, HOLD, RECEIVE, AND TAKE the said sums of £—— and £——, and the said one equal fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the interest, dividends, and annual produce thereof respectively, And all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and I. K., their executors, administrators, or assigns, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter declared, expressed, and contained of and concerning the same respectively: AND EACH of them the said C. D. and A. B. (*e*), so far as relates to the acts and deeds of herself and himself, and her and his executors and administrators, and of all persons claiming by, from, through, or under her or him respectively, and the said C. D., so far also as relates to the acts and deeds of the said [*the testatrix of the stock*], doth hereby, for herself and himself, her and his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors, administrators, and assigns, THAT for and notwithstanding any act, deed, matter, or thing whatsoever, made, committed, or executed by the

Habendum to the trustees.

Covenants by the husband and wife;

—for right to assign;

---

mortgage monies by the settlement.

the monies due on mortgage; (see supra, p. 333, n. (*a*)); for the wife's interest not being disclosed by the mortgage deed, but resting solely on the separate instruments recited, the settlement will not, by containing the assignment, become part of the title of the mortgaged estate.

(*e*) It is obviously needful that the husband should join in the covenant for further assurance; and this, therefore, appears to be the most convenient mode of framing the covenants.

said C. D. and [*testatrix*], or either of them, she the said C. D. now hath in herself good right, full power, and lawful and absolute authority to assign the said sums of £—— and £——, and interest, and the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the dividends and annual produce thereof, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents; AND THAT, in case the said intended marriage shall take effect, the said C. D. and A. B., and each of them, their and each of their executors and administrators, and all and every other persons and person having or claiming, or who shall or may have or claim, any estate, right, title, interest, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said premises, or any of them, or any part thereof, by, from, under, or in trust for the said C. D. and A. B., or either of them, their or either of their executors or administrators, or by, from, or under the said [*testatrix*], shall and will, from time to time, and at all times thereafter, upon every reasonable request to be made for that purpose by the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or by any person or persons interested in the premises under these presents, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, deed, things, devices, transfers, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning, transferring, and assuring the said sums of £—— and £——, and the interest thereof respectively, and the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the dividends thereof, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, and for enabling them to obtain payment and transfer of the same respectively, as by the said E. F.,

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

—and for further assurance;

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST, DETERMINING ON BANKRUPTCY, &c.

G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall be reasonably advised or devised and required. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreements, and in consideration of the said intended marriage, it is hereby agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sums of £—— and £——, and the said one equal fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the said sum of £—— like annuities, hereinbefore mentioned to have been transferred into the names of the said E. F., G. H., and I. K., and of and in the interest, dividends, and annual produce thereof respectively, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized; AND FROM and after the solemnization thereof, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively, (that is to say), UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, when and so soon as the said one equal fourth part hereinbefore assigned, or expressed to be assigned, of the said sum of £——, —*l.* per cent. —— Bank Annuities, shall, under the said will of the said ——, have become transferable to the said C. D., cause and procure the same fourth part to be transferred into the names of them the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor; AND DO AND SHALL either permit and suffer the said sums of £—— and £——, and the said sum of £——, —*l.* per cent. —— Bank Annuities, and the said fourth part or share hereinbefore directed to be transferred of the said sum of £—— like annuities, or any of the said sums, or

Witnesseth, further declaration of trusts of the wife's property.

In trust for the wife till marriage;

—afterwards upon trusts for investment and varying securities;

—either to continue the present securities;

any part or parts thereof respectively, to remain in their actual state of investment, OR DO AND SHALL, as to the said sums of £—— and £——, and £——, —*l.* per cent. —— Bank Annuities, at any time or times after the solemnization of the said intended marriage, and as to the said fourth part or share of the said sum of £——, —*l.* per cent. —— Bank Annuities, at any time or times after the same shall have been reduced into possession, with the consent in writing of the said C. D., during her life, and after her death, if the said A. B. shall then be living, and shall become entitled, under the trusts hereinafter contained, to the receipt of the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, with the consent in writing of the said A. B., during so long as he shall so remain entitled to receive the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, and at all other times during the continuance of the trusts hereby declared, at the discretion of the said E. F., G. H., and I. K., or of the survivors or survivor of them, or of the executors or administrators of such survivor, call in and compel payment of, sell, transfer, and dispose of the said sums of £—— and £——, and of the said sum of £——, —*l.* per cent. —— Bank Annuities, and of the said fourth part, hereinbefore directed to be transferred, of the said sum of £—— like annuities, or any of the said sums, or any part or parts thereof respectively, and do and shall, with such consent or at such discretion as aforesaid, lay out and invest the money to arise by any such calling in, payment, sale, transfer, or disposition as aforesaid, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland (*f*)), with power from time to time (with such consent or at such discretion as aforesaid) to alter, vary, and transpose the same stocks, funds, and securities into or for other stocks, funds, or securities of the same or a like

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

—or to change them.

(*f*) See supra, p. 312, n. (*e*).

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

nature (*g*): AND DO AND SHALL, during the life of the said C. D., pay and apply the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to &c., [*trust for the wife's separate use, supra, p.* 315]; AND FROM AND AFTER the death of the said C. D., in case the said A. B. shall then be living, and shall not then be an outlaw, or an uncertificated bankrupt, and shall not previously have become an insolvent debtor within the meaning of any act of parliament for the relief of insolvent debtors, and shall not have assigned, charged, or incumbered the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, or any part thereof, and shall not have done any act or thing whereby the said interest, dividends, and annual produce, or any part thereof, might (if the same had belonged absolutely to the said A. B.) have been in anywise assigned, charged, or incumbered, do and shall pay the said interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit the same to be received by, the said A. B. during his life, until he shall be outlawed or be found or declared a bankrupt, or become an insolvent debtor within the meaning of some act of parliament for the relief of insolvent debtors, or shall assign, charge, or incumber the said interest, dividends, and annual produce, or some part thereof, or shall do some act or thing whereby the said interest, dividends, and annual produce, or some part thereof, might (if the same belonged absolutely to the said A. B.) be in somewise charged, assigned, or incumbered (*h*), or until he shall marry again, whichever event shall first happen: AND FROM AND AFTER the death of the said C. D., in case the trust hereinbefore declared for the benefit of the said A. B. and his assigns shall not take effect, and from and after the determination of the same trust in case the same shall take effect, do and shall stand and be possessed of and interested in all and singular

Income during the wife's life, to be for her separate use;

—after her death for the husband, till he be outlawed, bankrupt, or insolvent, or assign, or marry again.

After determination of the preceding trusts, funds to be upon usual trusts for the children of the marriage.

(*g*) As to the investment and variation of securities, see supra, p. 313, n. (*f*).

(*h*) See supra, p. 367, n. (*a*).

the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every or, &c., [*for the children, as the husband and wife or the survivor shall appoint, and, in default of appointment, for the children, who, being sons, shall attain twenty-one, or, being daughters, shall attain that age or marry, equally, supra, p.* 317 *et seq. Hotchpot clause, supra, p.* 319]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, at any time or times during the life of the said C. D., and before the trust hereinbefore declared for the benefit of the said A. B. shall have become incapable of taking effect, if the said C. D. and A. B. shall so direct, and at any time or times during the life of the said C. D., and after the trust hereinbefore declared for the benefit of the said A. B. shall have become incapable of taking effect, if the said C. D. alone shall so direct, and at any time or times after the death of the said C. D., and during the continuance of the trust hereinbefore declared for the benefit of the said A. B., if the said A. B. shall so direct, or at any time or times after the death of the said C. D. in case the said last-mentioned trust shall not take effect, or at any time or times after the determination of the same trust if the same shall take effect, if the said trustees or trustee for the time being shall in their own discretion think proper so to do, to levy and raise any part or parts of the then expectant or presumptive or then vested share or shares of any child or children of the said intended marriage, under the trusts hereinbefore declared, not exceeding in the whole for any one such child one moiety or equal half part or share of his or her then expectant or then vested share, and to pay and apply the same for his, her, or their preferment, advancement, or benefit, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

Advancement clause.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

fit (*i*): AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, from and after the decease of the said C. D., in case the trust hereinbefore declared for the benefit of the said A. B. shall not take effect, or from and after the determination of the said trust in case the same shall take effect, pay and apply the whole or such part as the said E. F., G. H., and I. K., or the survivors or survivor of them, and the executors or administrators of such survivor, shall think fit of the interest, dividends, and annual produce of the share or respective shares to which any child or children of the said intended marriage shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively (*k*), and do and shall &c. [*Accumulation clause, supra, p. 321*]: PROVIDED ALWAYS, nevertheless, and it is hereby agreed and declared between and by the parties to these presents, that, in case the said A. B. shall die in the lifetime of the said C. D. leaving any child or children of the said intended marriage, and the said C. D. shall marry again, it shall be lawful for the said C. D. before such second marriage, by any deed under her hand and seal, to revoke all or any of the trusts hereby declared of or concerning any sum not exceeding the sum of £——, part of or to be raised out of the said sums of £—— and £——, and the said one-fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and £——, —*l.* per cent. —— Bank Annuities, or of or out of any of them, and, by the same or any other deed under her hand and seal, to direct that the sum not exceeding £——, the trusts whereof shall be so revoked, shall be held upon and for such trusts, intents, and purposes, for the benefit of her the said C. D. and

Maintenance clause.

Accumulation clause.

Power to the wife, if she survive the husband, to settle a part of her property on a second marriage;

(*i*) See supra, p. 320, n. (*l*). (*k*) See supra, p. 321, n. (*m*).

her then intended husband, and all or any of the children of her then intended marriage, or any of such objects as she the said C. D. shall think fit, and either with or without such powers of appointment to all or any one or more exclusively of the other or others of the children of the said then intended marriage, and such powers of advancement, maintenance, and education and accumulation, and such powers of investment upon the stocks, funds, or securities hereinbefore mentioned, and of altering and varying such stocks, funds, and securities, and such powers of appointing new trustees, and such other usual powers as the said C. D. shall think fit, all such powers to be vested in such person or persons, and to be exercised with such consent or at such discretion, and in such manner as the said C. D. shall think fit; AND IT IS HEREBY agreed and declared between and by the parties to these presents, that, subject and without prejudice to the trusts, intents, purposes, and powers, which, under the powers of revocation and new appointment last hereinbefore contained, shall be declared and created by the said C. D., the said sum not exceeding £——, the trusts whereof shall be so revoked, shall go and be held upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, and subject to which the same premises would have been held under these presents in case the aforesaid powers of revocation and new appointment had not been inserted in these presents (*l*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall be no child of the said intended marriage who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry (*m*), the said E. F., G. H., and I. K., their executors, administrators,

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

—but, subject to the trusts of such second settlement, the property is to remain subject to the trusts of the present settlement.

Trusts in default of any child of the marriage becoming entitled.

(*l*) See another form of this power, infra, Precedent VII., and a general power to appoint part of the funds, infra, Precedent VIII.

(*m*) See supra, p. 322, n. (*n*).

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

and assigns, shall stand possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, UPON THE TRUSTS following, (that is to say), IF THE SAID A. B. shall die in the lifetime of the said C. D., then, from and after his death and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the said C. D., her executors, administrators, and assigns; BUT IF THE SAID C. D. shall die in the lifetime of the said A. B., then, from and after the death of the said C. D. and such default or failure of children as aforesaid, which shall last happen, (but subject and without prejudice to the trust hereinbefore declared for the benefit of the said A. B., in case the same shall have taken effect), upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as the said C. D., notwithstanding her coverture, shall, by her last will and testament or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, AS TO ONE EQUAL MOIETY or half part of the said trust monies, stocks, funds, and securities, and the interests, dividends, and annual produce thereof, or of so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, upon trust for the said A. B., his executors and administrators, AND AS TO THE OTHER MOIETY or equal half part of the same trust monies, stocks, funds, and securities, do and shall pay the interest, dividends, and annual produce thereof to, or permit the same to be received by, the said A. B. and his assigns during his life; AND AFTER his death do and shall stand and be possessed of and interested in the same moiety upon trust for such person or persons as at the death of the said A. B. would have become entitled thereto under the statutes

If the wife survive her husband, for her absolutely;

—but if she die in his lifetime, as she shall by will appoint;

—and in default of appointment,

—as to one moiety for the husband absolutely;

—as to the other moiety, for the husband for life;

—and after his death, for the next of kin of the wife of her own blood.

for the distribution of the personal estate of intestates, in case the said C. D. had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statute (*n*).

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, he the said A. B. doth, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors, and administrators, that in case the said intended marriage shall take effect, the executors or administrators of him the said A. B. shall, within six calendar months from the day of his death, pay or cause to be paid to the said E. F., G. H., and I. K., their executors, administrators, or assigns, the sum of £——, with interest for the same at the rate of —*l.* per cent. per annum, from the day of the death of him the said A. B. (*o*): AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand possessed of and interested in the said sum of £——, [*the sum assured by the policy of assurance*], and all and singular other the monies (if any) to become payable under or by

Witnesseth, further covenant by the husband that his executors or administrators shall, after his death, pay a sum of money to the trustees.

Trusts of the policy of assurance on the husband's life and of the money, to be paid by his representatives;

(*n*) See supra, p. 323, n. (*q*).

(*o*) When a husband covenanted with the trustees of his marriage settlement to pay an annual sum of £80 during his life, and that his heirs, executors, or administrators should, within twelve calendar months after his death, pay to the trustees the sum of £4000 on various trusts, it was held that the sum of £4000 was not a debt capable of valuation by the commissioners in bankruptcy; and that, therefore, the trustees could not prove for it under a fiat against the husband under the statute 6 Geo. 4, c. 16, s. 56. (*Ex parte Eagle re Gibbons*, Mont. & M'A. 422: see, too, *Hill* v. *Cock*, 1 Rose, 323; *S. C.* 1 Ves. & B. 176; *Ex parte Granger*, 10 Ves. 349).

As to proving under the husband's bankruptcy a debt secured to the trustees by his bond or covenant, and to be paid after his death.

It may be proper to observe, that a covenant contained in the settlement is a cheaper and more convenient expedient than a bond for securing monies to be paid after the marriage, as it avoids the ad valorem duty on bonds, and the risk of the bond being separated from the settlement and lost.

Covenant better than bond for securing future payment to trustees of marriage settlement.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

virtue of the said policy of assurance hereinbefore mentioned to have been effected on the life of the said A. B., and of and in the said sum of £—— hereinbefore covenanted to be paid by the executors or administrators of the said A. B., and of and in the interest and annual produce of the said monies, or of the stocks, funds, or securities in or upon which the same may be laid out or invested,

—declared by reference to the preceding trusts;

UPON AND FOR the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared, expressed, and contained of and concerning the monies to arise by the calling in, payment, sale, transfer, or disposition of the aforesaid sums of £—— and £——, and the said sum of £——, —*l.* per cent. —— Bank Annuities, and the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and of and concerning the interest and annual produce thereof, or of the stocks, funds, and securities in or upon which the same may be laid out or invested, or as near thereto as the deaths of parties and other circumstances will admit of;

—with a variation in the trust in case of no child of the marriage becoming entitled.

SAVE AND EXCEPT that in case there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, from and after the death of the said C. D., and such default or failure of children of the said intended marriage as aforesaid, which shall last happen, the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand possessed of and interested in the said policy of assurance, and of and in the said sum of £——, and all and singular other the monies (if any) to become payable under or by virtue of the said policy of assurance, and of and in the said sum of £—— hereinbefore covenanted to be paid as aforesaid, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, In trust for the said A. B., his executors, administrators, and assigns (*p*):

Proviso that if

PROVIDED ALWAYS never-

Convenience of

(*p*) Monies secured by an assurance on the husband's life, or secured to be

theless, and it is hereby agreed and declared between and by the parties to these presents, that if the said A. B. shall at any time during his life pay to the said E. F., G. H., and I. K., their executors, administrators, or assigns, the sum of £——, then and in such case, from and after such payment shall have been so made, the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said policy of assurance, and all monies to become payable under or by virtue of the same, upon trust for the said A. B., his executors, adminis-

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

the husband pay the trustees the sum assured on his life, the policy shall belong to him;

---

paid after his decease, are most conveniently handled by declaring the trusts of them separately from, and by reference to, the trusts of the other funds; by this means we are secure that all such of the principal trusts as are applicable thereto will apply to these monies; and we avoid embarrassing ourselves in the declaration of the principal trusts with the consideration which of the trusts can, and which cannot, apply to these monies. We have provided, too, for the event of any monies becoming payable under the assurance by way of bonus during the husband's life, which, although, from the practice of insurance offices, not a probable, is yet a possible event.

declaring trusts by reference of monies not payable till some of the trusts must necessarily have expired.

In framing trusts by reference, we must take care that we refer to the former trust at the right point; i. e. that the funds of which we are declaring trusts are in the same state as those to which we refer. If, for example, we are declaring trusts of monies, we must refer, not to the trusts previously declared of stocks, but to those declared of the monies to arise from the sale of such stocks. We should likewise see that the parties intend that the trusts in default of children becoming entitled shall be the same with respect to both funds, which is seldom the case. The variation may be most safely made by an exception, as in the text, or by a proviso to the same effect.

Manner of framing trusts by reference.

It is usual and proper to comprise in the assignment and trusts of the settlement the policies and *all* monies to become payable thereunder; but even though the settlement should, in words, apply only to the policy and the original sum assured, bonuses would, notwithstanding, be subject to the trusts of the settlement. (*Courtney* v. *Ferrers*, 1 Sim. 137, stated ante, Vol. 3, p. 371; *Parkes* v. *Bott*, 9 Sim. 388). If, on a bonus being declared on a settled policy, the office should give the option to the holder of having the bonus added to the principal sum assured, or applied in diminution of the future premium, the trustees could not adopt the latter alternative with safety. But it may be very proper to give the trustees a power of allowing the bonuses to be applied in diminution of premiums.

Bonuses on policies subject to settlement, though not expressly included.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

trators, and assigns, AND SHALL stand possessed of and interested in the said last-mentioned sum of £——, [*the sum so paid by the husband*], and the interest and annual produce thereof, or of the stocks, funds, or securities in or upon which the same may be laid out or invested, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared, expressed, and contained of and concerning the monies to arise by the calling in, payment, sale, transfer, or disposition of the aforesaid sums of £—— and £——, and the said sum of £——, —*l.* per cent. —— Bank Annuities, and the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the interest, dividends, and annual produce thereof, or of the stocks, funds, or securities in or upon which the same may be laid out or invested, or as near thereto as the deaths of parties and other circumstances will admit of; SAVE AND EXCEPT that, after the death of the said C. D., the interest and annual produce of the said sum of £——, or of the stocks, funds, and securities in or upon which the same may be laid out or invested, shall be payable to the said A. B. and his assigns during his life, and that in case there shall be no child of the said intended marriage, &c. [*absolute trust for A. B., ut supra, p.* 382]: AND THE SAID A. B. doth hereby, himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that, in case the said intended marriage shall take effect, he the said A. B. shall and will thenceforth, from time to time during his life, unless and until he the said A. B. shall, under the proviso hereinbefore contained, become absolutely entitled to the said policy of assurance, and the monies to become payable under or by virtue of the same, duly pay or cause to be paid the said annual premium of £——, and such other sum or sums of money (if any) as shall at any time or times become payable for keeping on foot the said policy of assurance, or restoring the same, if the same shall have become voidable, and shall and will make every such payment on the first day on which the same shall become due or ought to be made, or, in case

—and the money paid be held on the trusts of the other settled funds;

—with a variation in the ultimate trust.

Covenant by the husband to keep on foot the policy of assurance, and to revive it if rendered void.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

the said policy shall have become void, shall and will effect a new policy or policies of assurance, with such office or offices as the trustees or trustee for the time being of these presents shall select, on the life of him the said A. B., in such sum or sums of money as shall amount to the sum which would have been payable under the policies which shall have become void if the said A. B. had then died, and shall and will pay all expenses of effecting such policy or policies, and the annual premium or premiums, or other sum or sums of money (if any) which shall from time to time become payable for keeping on foot the same, or restoring the same or any of them which may have become voidable, and shall and will make every such payment on the first day on which the same shall become due or ought to be made, and so from time to time replace any such new policy or policies as aforesaid which may become void, it being the intent and meaning of these presents, and of the parties hereto, that the said A. B. shall at all times during his life, at his own expense, keep his life so assured, that at his death a sum may be payable, by virtue of such assurance, to the trustees or trustee for the time being of these presents, equal in amount to the sum which will then be payable in case the said now subsisting policy be kept on foot, and that the policy or policies subsisting for the time being, and the monies to become payable under or by virtue of the same respectively, shall be held and applied upon and for the trusts, intents, and purposes in and by these presents declared of and concerning the said policy now subsisting, and the monies to become payable under or by virtue of the same, and shall and will forthwith deliver the receipt for every such payment as aforesaid, and also any new policy or policies which may be effected as aforesaid, to the said E. F., G. H., and I. K., their executors, administrators, or assigns, and shall not nor will at any time hereafter do, or commit, or suffer any act or thing whereby the said subsisting policy of assurance, or any such new policies as aforesaid, shall or may be vitiated or become void or voidable, or the said E. F., G. H., and I. K., their executors, administrators, or assigns, or any of them, shall or may be prevented or hindered from

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

recovering or receiving the monies intended to be thereby assured, or any part or parts thereof respectively (*q*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors or survivor of them, and the executors and administrators of such survivor, (if they or he shall in their or his absolute discretion think fit), at any time or times before the said A. B. shall, under the proviso hereinbefore contained, have become absolutely entitled to the said policy of assurance and the monies to become payable under or by virtue of the same, to apply any part or parts of the interest, dividends, and annual proceeds of the trust monies, stocks, funds, and securities, the trusts whereof are hereinbefore declared, or if the same be insufficient, then any part of the said trust monies, stocks, funds, or securities, in payment of the said annual premium of £——, or other the sum or sums of money (if any) which shall at any time or times become payable for keeping on foot or restoring the said subsisting policy of assurance, or for effecting, keeping on foot, or restoring any such new policy or policies of assurance on the life of the said A. B. as aforesaid: PROVIDED ALSO, nevertheless, and it is hereby agreed and declared between and by the parties to these presents, that any omission or neglect by the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, to apply any part or parts of the said interest, dividends, and annual proceeds, trust monies, stocks, funds, or securities, in payment of the said annual premiums or sum or sums of money which may become payable for keeping on foot or restoring the said subsisting policy, or for effecting, keeping on foot or restoring any such new policy of assurance on the life of the said A. B. as aforesaid, or to enforce the covenants hereinbefore on the part of the said A. B. contained with respect or in relation to the said policy, or any of the said covenants, shall not be

Power to the trustees to pay premiums, &c., on the policy out of the income or capital of the trust funds.

Trustees not to be chargeable with a breach of trust, if the policy be not kept on foot.

(*q*) As to the law relating to policies of assurance, see ante, Vol. 3, pp. 90, 91, 367, 368, 371, and supra, p. 383.

chargeable as a breach or breaches of trust, and that the said E. F., G. H., and I. K., or any of them, their or any of their executors or administrators, shall not be in anywise responsible or accountable for or in respect of any such omission or neglect, or for or in respect of the said subsisting policy, or any such new policies as aforesaid, being vitiated or rendered void through any means whatsoever (*q*).

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, each of them the said A. B. and C. D., doth hereby for himself and herself, and his and her heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, in manner following, (that is to say), THAT if the said C. D. now is, or if at any time [during the said intended coverture (*r*)] the said C. D., or the said A. B. in her right, shall become entitled by descent, transmission, claim, devise, bequest, gift, donation, representation, purchase, or otherwise, to any real or personal property, which shall amount or be equal in value to the sum of £—— (*s*), for any estate or interest whatsoever, then and in such case the said A. B. and the said C. D., and each of them, their and each of their heirs, executors, and administrators, and all other necessary parties, shall and will, at the costs and charges of the said trust estate, from time to time, as soon as circumstances will admit, by good and effectual conveyances, assignments, and assurances, or other acts and deeds in the law,

Witnesseth, further, covenants by the husband and wife;

—to settle other present or after-acquired property of the wife;

(*q*) The language of this proviso is certainly very strong; but it would probably not extend to protect the trustees from any wilful neglect to keep up, or enforce keeping up, the policy, if called on so to do by the cestuis que trust; it only means that they are not, as they ought not to be, bound to look after the fate of the policy. The effect of such a clause is to leave it to the discretion of the husband, whether he will or will not keep it up; but if he do not keep it up, he or his assets will be bound to make good the loss to the settlement.

Indemnity to the trustees for not keeping up a policy of assurance.

(*r*) If it be intended to bind, for the benefit of the children, property which may accrue to the wife after the determination of the coverture, say, instead of the words in brackets, "after the solemnization of the said intended marriage."

(*s*) The sum of £200 is commonly named.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

to the good liking and satisfaction of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, convey, assign, settle, and assure, or otherwise cause to be well and effectually vested in the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, according to the nature and quality thereof respectively, all and singular such real and personal estate (other than jewels, trinkets, ornaments, plate, pictures, prints, and books) to which the said C. D. is now, or the said C. D., or the said A. B. in her right, shall so become entitled as aforesaid, for all her estate and interest therein, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained or referred to, of and concerning the same, (that is to say), As to such part or parts of the said real or personal property as shall not consist of money, (other than any annuity or annuities, or other real or personal property to which the said C. D., or the said A. B. in her right, may be or become entitled for the life of the said C. D. only, or for any term of years determinable on her death), Upon trust, with all convenient speed, and in such manner as the said trustees or trustee for the time being shall think fit (*t*), to sell and dispose of and convert the same into money, And to stand possessed of and interested in the monies to arise by such sale, disposition, and conversion into money, and of and in all and singular the money to which the said C. D., or the said A. B. in her right, may be or become entitled during the said intended coverture, and of and in all interest and annual produce thereof respectively, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared, expressed, and contained, of and concerning the monies to arise by the calling in, payment, sale, transfer, of

—as to all except money and interests for the life of wife;

—upon trust to sell and convert the same into money;

—and to hold the money and all such of the property as is originally money upon the trusts declared of the wife's property already settled;

(*t*) It might be convenient to give the usual powers of sale. See supra, p. 346.

disposition of the said sums of £—— and £——, and the said fourth part of the said sum of £——, —*l.* per cent. —— Bank Annuities, and the said sum of £——, —*l.* per cent. —— Bank Annuities, and the interest and annual produce thereof, or as near thereto as the deaths of parties and other circumstances will admit of; AND AS TO SUCH ANNUITY or annuities or other real or personal property to which the said C. D. is now, or the said C. D., or the said A. B. in her right, shall so become entitled for the life of the said C. D. as aforesaid, or for any term of years determinable on her death, UPON TRUST to pay and apply the same annuity or annuities, or the rents, issues, and profits, interest, dividends, or annual produce of such real or personal property, (as the case may be), in such and the same manner as the interest, dividends, and annual produce of the aforesaid trust monies, stocks, funds, and securities, the trusts whereof are hereinbefore declared, shall from time to time be applicable under the same trusts, BUT with power for the said trustees or trustee for the time being of these presents, with the consent in writing of the said C. D., at any time to sell the same in such manner as the said trustees or trustee for the time being shall think fit, so nevertheless that the money to arise from any such sale or sales be held and applied upon and for such and the same trusts, intents, and purposes as are hereinbefore declared or referred to of such part of the personal estate to which the said C. D. now is, or she, or the said A. B. in her right, shall so become entitled as aforesaid, as shall originally consist of money (*u*). [*Trustees' receipt clause, supra, p. 323.— Clauses for the appointment of new trustees and for the indemnity and reimbursement of trustees, supra, p. 324, et seq.*]. IN WITNESS &c.

OF PERSONALTY, THE HUSBAND'S LIFE INTEREST DETERMINING ON BANKRUPTCY, &c.

—and as to interests, for the wife's life upon trust to apply the same as the income of the already settled property;

—with power of sale.

Trustee clauses.

(*u*) If the exception and special trust of the wife's life interests were not inserted, the trustees would be bound to sell them, and apply the monies in the same manner as the monies produced by sale of the other property. But this cannot, of course, be the intention of the parties.

Wife's life interests should be excepted out of the direction for sale in an agreement to settle after-acquired property.

It may be fitting to direct, that the jewels, trinkets, &c., shall be settled to the wife's separate use. See a precedent of such a settlement, infra.

See further, as to covenants to settle after-acquired property, or property not specifically comprised in the settlement, ante, Vol. 1, Art. SETTLEMENTS.

VII.

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

MARRIAGE SETTLEMENT *of a* SHARE *of a* SUM *raisable under the Trusts of a* TERM, *and of another* SUM *secured by a* BOND, *and of a* SUM *for the Payment of which the* FATHER *of the intended* HUSBAND *covenants.* AN ANNUITY *to be paid during the* JOINT *Lives of the Husband and Wife to the* WIFE *for her* SEPARATE USE, *and the residue of the Income to the* HUSBAND, *and the whole to the* SURVIVOR *for Life. After the Death of the* SURVIVOR, *the Funds to be in trust for the* CHILDREN AND REMOTER ISSUE *as the Husband and Wife or Survivor* APPOINT, *and in Default, for the* CHILDREN EQUALLY. USUAL CLAUSES. GENERAL POWERS *for the Husband and Wife, if there be but* ONE CHILD, *to appoint certain Parts of their respective Fortunes.* POWER *to Trustees to* APPORTION *the different Funds, if they shall have been blended.* DOWER CLAUSE. LEGITIM CLAUSE.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B. of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; E. F., of &c., [*the father of the intended husband*], of the third part; and G. H., of &c., and I. K., of &c., [*trustees*], of the fourth part: WHEREAS, under and by virtue of an indenture bearing date the —— day of ——, and made, or expressed to be made, between [*parties*], (being the settlement made previously to and in contemplation of a marriage then intended, and shortly afterwards had and solemnized, between the said —— and ——), the said C. D. is entitled to

Recital of the intended wife being entitled to a share of a sum raisable under the trusts of a term.

a certain sum of £——, one third part of a sum of £——, directed to be raised for portions for the younger children of the said ——, by the said ——, and by which indenture a term of —— years was limited in certain estates therein mentioned, situate in the county of ——, to certain persons therein named, their executors, administrators, and assigns, upon trusts for raising the said sum of £——; AND WHEREAS, by a bond or obligation in writing, bearing date the —— day of ——, under the hand and seal of ——, (the brother of the said C. D.), the said [*brother*], became bound unto the said C. D. in the penal sum of £——, with a condition thereunder written for making void the same on payment by the said [*brother*], his heirs, executors, or administrators, unto the said C. D., her executors, administrators, or assigns, of the sum of £——, with interest for the same after the rate of —*l.* per cent. per annum, at the times and in manner therein mentioned for payment of the same respectively; AND WHEREAS the sum of £—— still remains due and owing upon the said bond; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said C. D. should assign the said sums of £—— and £——, and all interest due and to become due for the same respectively, unto the said G. H. and I. K., their executors, administrators, and assigns, and that the said E. F. should enter into such covenant as is hereinafter contained for the payment unto the said G. H. and I. K., their executors, administrators, or assigns, of the sum of £——, with interest for the same as hereinafter mentioned, and it was agreed that the said several principal sums, and the interest thereof respectively, should be held and applied upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same respectively; AND WHEREAS, in pursuance of the said agreements, by an indenture bearing even date with, but executed before, these presents, and made, or expressed to be made, between

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

—and of a sum secured to her by a bond.

—part of which remains due.

—of the agreement for the intended marriage.

—of the assignment of the wife's share in the sum secured by the term.

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

[*parties*](*a*), the said C. D., with the privity and approbation of the said A. B., (testified as therein mentioned)(*b*), hath assigned unto the said G. H. and I. K., their executors, administrators, and assigns, the said sum of £——, and all interest due and to become due for the same, To hold the same unto the said G. H. and I. K., their executors, administrators, and assigns, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as were or should be declared or expressed of and concerning the same in and by an indenture therein referred as to bearing even date therewith (being the present indenture). NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, she the said C. D., with the privity and approbation of the said A. B., (testified by his being a party to and executing these presents (*b*)), hath assigned and by these presents doth assign unto the said G. H. and I. K., their executors, administrators, and assigns, ALL THAT the said principal sum of £——, secured by the hereinbefore recited bond, and all interest due and to become due for the same, TOGETHER WITH the said bond and the full benefit thereof; AND ALL THE ESTATE, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of her the said C. D., of, in, and to the same premises, and every part thereof respectively, TOGETHER ALSO with full power and authority for the said G. H. and I. K., and the survivor of them, and the executors and administrators of such survivor, their and his assigns, to ask, demand, sue for, recover, and receive, and give effectual releases and discharges for the said sum of £——, and interest, and every part thereof respectively, in the names or name of the said A. B. and C. D., or either of them, or of their or either of their executors or administrators(*c*): TO HAVE, HOLD,

Witnesseth, assignment by the wife of the sum secured by the bond to the trustees.

—and the estate, &c.

Power of attorney.

(*a*) As to the reasons for making the assignment by a separate deed, see supra, p. 333, n. (*a*).

(*b*) See supra, p. 310, n. (*d*).

Distinction be-

(*c*) The power conferred by this clause is different from that given by

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

RECEIVE, AND TAKE the said sum of £——, and the interest thereof, and all and singular other the premises hereby assigned, or expressed and intended so to be, unto the said G. H. and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter declared, expressed, and contained of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, the said E. F. doth hereby, for himself, his heirs, executors, and administrators, covenant

Habendum to the trustees upon the trusts of the settlement.

Witnesseth, further covenant by the father of the intended husband within six months after the mar-

---

the receipt clause. The power of attorney is intended only to enable the trustees to sue at law, and give legal receipts to the persons from whom they recover money, while the receipt clause has for its object to enable them to give releases which shall discharge the persons paying money to them from the necessity of seeing that it is duly applied according to their trusts. The power of attorney is given in all assignments of legal choses in action, whether made to trustees or to assignees for their own benefit, but the receipt clause is added only when trusts are declared. The power of attorney has a legal object, and is consequently inserted only in those settlements in which there is an assignment of a legal chose in action, while the receipt clause owes its origin to the doctrines of equity, and is inserted in all settlements. See supra, p. 324, n. (*r*). In a case where there was a properly worded power of attorney, (given by a party however who had died), and also a receipt clause, so worded as to have become inoperative in the events which had happened, it was suggested that the power of attorney enabled the attorney to give a valid equitable discharge for trust monies to be paid him ; but the Vice-Chancellor (Sir L. Shadwell) said, " Supposing that the power of attorney is to be considered *in a court of equity* as remaining in force, notwithstanding the death of the party who gave that power, the question is, whether, on account of the difference of the language used in the two parts of the deed, the party must not be taken to have intended that there should be an inherent difference between receipts given under the power of attorney and those given under what is usually called the receipt clause. *I do not think that the court has ever decided that a receipt given under the former is to be taken as equivalent to a receipt given under the latter.*" (*Brasier* v. *Hudson*, 9 Sim. 110). It is to be observed, however, that this case is not a decision, that where there is a power of attorney, *and no receipt clause*, trustees cannot give a valid equitable discharge under the power of attorney.

tween the power to give receipts under a power of attorney and under the trustees' receipt clause.

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

with the said G. H. and I. K., their executors and administrators, that if the said intended marriage shall take effect, and he the said E. F., his heirs, executors, or administrators, shall and will, within six calendar months next after the solemnization thereof, pay or cause to be paid unto the said G. H. and I. K., their executors, administrators, or assigns, the sum of £——, with interest for the same after the rate of —*l.* per cent. per annum, to be computed from the day on which the said intended marriage shall be solemnized, without any deduction or abatement whatsoever for any present or future taxes or impositions, or any other matter, cause, or thing whatsoever.

riage to pay a sum of money to the trustees for the purpose of the settlement.

Witnesseth further, declaration of trusts.

AND THIS INDENTURE ALSO WITNESSETH, that it is hereby agreed and declared between and by the parties to these presents, that the said G. H. and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said several sums of £——, £——, and £——, and the interest thereof respectively, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively, (that is to say), As, TO, FOR, AND CONCERNING the said two several sums of £—— and £——, [*the monies assigned by the wife*], and the interest thereof, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized; AND FROM AND AFTER the solemnization of the said intended marriage, UPON TRUST, that they the said G. H. and I. K., and the survivor of them, or the executors or administrators of such survivor, do and shall either permit and suffer the said sums of £—— and £—— to remain on their respective present securities, or do and shall at any time or times, with the consent in writing of the said A. B. and C. D. during their joint lives, or of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee for the time being, call in and compel payment of and receive the said sums of £—— and £—— respectively, or either of them, or any part

As to the intended wife's funds, for her till the marriage.

—and after the marriage, in trust to allow the same to remain as actually invested, or to vary the securities.

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

thereof respectively, and with such consent or at such discretion as aforesaid, lay out and invest the same in their or his names or name in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest in or upon government or real securities in England or Wales, but not in Ireland (*d*), And do and shall from time to time, with such consent or at such discretion as aforesaid, alter, vary, and transpose the said stocks, funds, or securities, if and as they or he shall think fit (*e*): AND AS, TO, FOR, AND CONCERNING the said sum of £——, [*the money secured by covenant*], upon trust that they the said G. H. and I. K., or the survivor of them, or the executors or administrators of such survivor, do and shall, with such consent or at such discretion as aforesaid, lay out and invest the same as and when the same shall be paid in their or his names or name in or upon any of the stocks, funds, and securities aforesaid, And do and shall from time to time, with such consent and at such discretion as aforesaid, alter, vary, and transpose the same stocks, funds, and securities, if and as they or he shall think fit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall not be lawful for the said G. H. and I. K., or the survivor of them, or the executors or administrators of such survivor, to compel payment of the said sum of £——, or any part thereof, at any time during the joint lives of the said A. B. and C. D., or the life of the survivor of them, without their or his or her consent in writing (*f*):

As to the sum covenanted to be paid by the husband's father, upon trust to invest the same and vary securities.

Proviso that the trustees shall not during the lives of the husband and wife, or the survivor, compel payment of this sum without their, his, or her consent.

(*d*) See supra, p. 312, n. (*e*).

(*e*) See supra, p. 313, n. (*f*).

(*f*) If it is intended that the trustees shall have an absolute discretion as to calling in money secured by a covenant of this nature, the following proviso may be used:—

Absolute power to trustees to permit monies to remain on bond or covenant.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said G. H. and I. K., and the survivor of them, and the executors and administrators of such survivor, at their or his discretion, to permit and suffer the said sum of £——, or any part thereof, to remain on the

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

Declaration of trusts of all the funds and the income thereof.

In trust during the joint lives of husband and wife out of the income to pay an annuity to the wife for her separate use, with restriction on anticipation.

AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said G. H. and I. K., their executors, administrators, and assigns, shall, from and after the solemnization of the said intended marriage, stand and be possessed of and interested in the said several sums of £—— and £——, and the stocks, funds, or securities in or upon which the same are or shall be laid out or invested, and the interest, dividends, and annual produce thereof respectively, (including the interest which shall arise for the said sum of £—— until the same shall be paid), upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of or concerning the same, (that is to say) UPON TRUST that they the said G. H. and I. K., and the survivor of them, and the executors or administrators of such survivor, do and shall, during the joint lives of the said A. B. and C. D., by and out of the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, levy and raise the clear yearly sum of £——, and pay and apply the same by equal half-yearly payments, without any deduction or abatement whatsoever, to such person or persons and for such intents and purposes as the said C. D. shall from time

---

security of the said covenant, [*or* " bond"] during the life of the said [*covenantor—wife* &c., *as may be determined*], or during any less period, And that the said G. H. and I. K., their executors or administrators, or any of them, shall not be answerable for any loss which may be occasioned thereby."

Cases as to proving in bankruptcy debts secured to the trustees of marriage settlements by bond or covenant.

Many cases have occurred in bankruptcy on covenants and bonds of this nature when given by the husband, and especially when framed so that the money is only payable on notice; the question being as to the right of the trustees to prove the debt. See *Ex parte Mare*, 8 Ves. 335; *Ex parte Campbell*, 16 Ves. 244; *Hill* v. *Cock*, 1 Rose, 323; *S. C.* 1 Ves. & B. 176; *Ex parte Elder*, 2 Madd. 282; *Ex parte Dicken*, Buck, 115; *Ex parte Brenchley*, 2 G. & J. 174; decided before the stat. 6 Geo. 4, c. 16, (see sect. 56); and *Ex parte Turpin*, Mont. 443; *S. C.* 1 Dea. & Chit. 120; *Ex parte Shute*, Mont. & Bligh, 385; *S. C.* 3 Dea. & Chit. 1; *Ex parte Hooper*, 3 Dea. & Chit. 655; decided since the statute. See, too, supra, p. 367, n. (*a*).

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

to time, notwithstanding her coverture, by any writing or writings under her hand and seal, direct or appoint, And in default of and until such direction or appointment, and so far as no such direction or appointment shall extend, into her own hands for her sole and separate use and benefit independently and exclusively of the said A. B., and without being in anywise subject to his debts, control, interference, or engagements, but so nevertheless that the said C. D. shall not have power to deprive herself of the benefit thereof by any direction, appointment, or other disposition thereof, by sale, mortgage, charge, or otherwise in the way of anticipation, And the receipts of the said C. D., or of her appointees, notwithstanding her coverture, to be, from time to time, sufficient discharges for the same, and the first half-yearly payment of the said yearly sum of £—— to be made at the end of six calendar months next after the solemnization of the said intended marriage (*g*); AND DO AND SHALL pay the residue of the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit the same to be received by, the said A. B. and his assigns; AND FROM AND AFTER the death of such one of them the said A. B. and C. D. as shall first die, do and shall pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit the same to be received by, the survivor of them the said A. B. and C. D., and his or her assigns, during his or her life; AND FROM AND AFTER the death of the survivor of them the said A. B. and C. D., do and shall stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every, or such one or more, exclusively of the other or others of the issue of the said A. B. and C. D., whether a child or remoter descendant or descendants, (such remoter descendant or descendants being born during the lives of the said A. B.

—and to pay the residue of the income to her husband.

—and after the death of either husband or wife, to pay the income to the survivor for life.

—and after the death of the survivor, to hold the trust funds and income;

—in trust for the children and issue of the marriage, as the husband and wife shall appoint;

(*g*) As to framing trusts for the separate use of married women, see supra, p. 316, n. (*g*); and see infra, Precedent VIII.

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

and C. D., or the life of the survivor of them (*e*)), at such age, day, or time, or respective ages, days, or times, and if more than one, in such parts, shares, and proportions, and with such annual sum of money, and future or executory or other trusts, such annual sums of money and future or executory or other trusts being for the benefit of some or one of such child or children or remoter descendant or descendants as aforesaid, with such provision for the maintenance and education or the advancement or preferment in the world of any such child or children or remoter descendant or descendants, either at the discretion of the said trustees or trustee for the time being, or of any other person or persons to be named or appointed in that behalf or otherwise, and upon such conditions, with such restrictions, and in such manner as the said A. B. and C. D. shall, during their joint lives, by any deed or deeds, or instrument or instruments in writing, with or without power of revocation and new appointment, to be sealed and delivered by them in the presence of, and to be attested by, two or more credible witnesses, jointly direct or appoint; AND IN DEFAULT of such joint direction or appointment, and so far as no such direction or appointment shall extend, then as the survivor

—or as the survivor shall appoint;

Validity and extent of powers in marriage settlements to appoint to grandchildren and remoter descendants.

(*e*) A power to appoint to children does not embrace grandchildren or remoter descendants; (2 Sugd. on Powers, 273; *Hewitt* v. *Lord Dacre*, 2 Kee. 622. See too supra, p. 318, n. (*i*)); but there is no objection to including grandchildren or remoter descendants within the power. (*Routledge* v. *Dorril*, 2 Ves. jun. 357). No appointment can, however, be made, except within the limits allowed by the law as to perpetuities, and with a view to this the appointment must be considered as contained in the settlement itself; and therefore it is better, in the creation of the power, to confine its exercise within the legal limits. (1 Sugd. Pow. chap. vii. sect. 1; *Routledge* v. *Dorril*, 2 Ves. jun. 357; *Church* v. *Kemble*, 5 Sim. 525; *Sadler* v. *Pratt*, Id. 632. See too 1 Sugd. Pow. 181; Id. ii. 70). As to the general law relating to perpetuities, see 1 Pow. Dev. by Jarman, 388 et seq.; *Cadell* v. *Palmer*, 10 Bing. 140). There is little use in extending the trusts in default of appointment to remoter descendants; and it is extremely objectionable to do so on account of the great alteration which such an extension renders necessary in the language of the subsequent clauses of the settlement. The power to appoint to remoter descendants provides sufficiently for the probabilities of the case. See, however, infra, Precedent XIV.

Trusts in marriage settlements, in default of appointment, should not extend to any descendants beyond children.

of them the said A. B. and C. D. shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be sealed and delivered by him or her in the presence of, and to be attested by, two or more credible witnesses, or by his or her last will or testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, direct or appoint; AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, in trust for all and every the children and child of the said A. B. by the said C. D., who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, to be divided between or among such children, if more than one, in equal shares; and if there shall be but one such child, the whole to be in trust for such one child: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that no child who or whose issue shall take any part of the said trust monies, stocks, funds, or securities, under or by virtue of any direction or appointment to be made by the said A. B. and C. D. jointly, or by the survivor of them, in pursuance of either of the powers hereinbefore in that behalf contained, shall have or be entitled to any further or other share of or in that part of the said trust monies, stocks, funds, and securities of which no such direction or appointment shall have been made, without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot, and accounting for the same accordingly (*f*): [*Advancement, Maintenance, and Accumulation clauses, see supra, pp.* 319—321]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall be no child of the said A. B. and C. D., who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

—and in default of any appointment, for the children of the marriage, who, being sons, attain twenty-one, and, being daughters, attain twenty-one or marry, in equal shares.

Hotchpot clause.

Advancement, maintenance, and accumulation clauses.

Trusts of the wife's funds, in default or failure of issue of the marriage, entitled thereto;

(*f*) The hotchpot clause is, it will be seen, slightly altered in the present case to meet the extension to remoter descendants of the power of appointment. See supra, p. 319, n. (*p*).

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

that age or marry(*g*), then and in such case the said G. H. and I. K., their executors, administrators, and assigns, shall, from and after the death of the said A. B., and such default or failure of children of the said intended marriage as aforesaid, which shall last happen, stand and be possessed of and interested in the said several sums of £—— and £——, [*the sums assigned by the wife*], and the stocks, funds, and securities in or upon which the same shall be so laid out or invested, and the interest, dividends, and annual produce thereof, or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein declared or contained(*h*), upon the trusts following, (that is to say), IF THE SAID C. D. shall outlive the said A. B., then in trust for the said C. D., her executors, administrators, or assigns; BUT IF THE SAID C. D. shall die in the lifetime of the said A. B., then in trust for such person or persons, and for such intents and purposes, as the said C. D., notwithstanding her coverture, shall, by her last will and testament, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, in trust for the said A. B., his executors, administrators, or assigns: AND IT IS HEREBY agreed and declared, between and by the parties to these presents, that if there shall be no child of the said A. B. by the said C. D., who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry(*i*), then and in such case the said G. H. and I. K., their executors, administrators, and assigns, shall, from and after the death of the said C. D., and such default or failure of children of the said intended marriage as aforesaid, which shall last happen, stand and be possessed of and interested in the said sum of £——, [*the sum covenanted to be paid by the husband's father*], and the stocks, funds, and securities in or upon which the same shall be laid out or

—if she survive her husband, for her absolutely;

—but if she die in his lifetime, as she shall appoint;

—and in default of appointment, for the husband.

Trusts of the husband's funds, in default or failure of issue of the marriage, entitled thereto.

(*g*) See supra, p. 322, n. (*n*). (*h*) See supra, p. 322, n. (*o*).
(*i*) See supra. p. 322, n. (*n*).

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

invested, and the interest, dividends, and annual produce thereof, or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein declared or contained (*k*), IN TRUST for the said A. B., his executors, administrators, and assigns: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall not be more than one child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry (*l*), it shall be lawful for the said C. D., at any time or times, either before or after the happening of such default or failure shall have been ascertained, and whether the said C. D. shall be married or single, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by her last will and testament, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, to direct and appoint, that, from and after such default or failure, but without prejudice to the life interest of the said A. B. therein, any sum or sums of money, not exceeding in the whole the sum of £——, shall be raised out of the said several sums of £—— and £——, [*the wife's property*], or the stocks, funds, or securities in or upon which the same respectively shall be laid out or invested, and shall be paid to herself, her executors or administrators, or to such other person or persons, or for such intents or purposes, as she shall think fit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall not be more than one child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter,

Power for the wife, if only one child of the marriage became entitled to the funds, to appoint a sum of money out of her own funds to herself or any other person.

Similar power for the husband as to his funds.

(*k*) See supra, p. 322, n. (*o*).

(*l*) Care must be taken that the power does not overreach the trusts for the children, i. e. that it shall take effect only in default of any child becoming entitled under the previous trusts. See supra, p. 322, n. (*n*).

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

shall attain that age or marry (*m*), it shall be lawful for the said A. B., at any time or times before or after the happening of such default or failure shall have been ascertained, by any deed or deeds, or instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament, or any codicil or codicils thereto, to direct and appoint, that, from and after such default or failure, but without prejudice to the life interest of the said C. D., any sum or sums of money not exceeding in the whole the sum of £—— shall be raised out of the said sum of £——, [*the sum to be paid by the husband's father*], or the stocks, funds, or securities in or upon which the same shall be laid out or invested, and shall be paid to himself, his executors or administrators, or to such person or persons or for such intents or purposes as he shall think fit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if at any time or times hereafter, in the execution of any of the trusts and provisions of this present indenture, it shall become necessary to divide and apportion between and among several persons the several funds, the trusts whereof are hereinbefore declared, and the trust monies, stocks, funds, or securities of which the said trust funds respectively, or any part thereof respectively, shall then consist, shall be so blended together that it shall be doubtful which part or parts thereof shall have been produced by or substituted for each original fund, or any part thereof respectively, then and in every such case it shall be lawful for the trustees or trustee for the time being of these presents, and, if requested so to do by any person or persons interested, the same trustees or trustee are and is hereby required, to divide or apportion and distribute such trust monies, stocks, funds, and securities between or among the said several persons entitled thereto, in such manner as the said trustees or trustee shall deem just and reasonable, according to the respective rights and interests of the several

Power for the trustees to divide and apportion the trust funds, (if they shall have been blended into one), among the several persons entitled thereto.

(*m*) See supra, p. 322, n. (*n*).

persons entitled thereto; and the division or apportionment and distribution so to be made shall be as binding and conclusive upon all persons claiming or to claim any interest in the premises as if the same had been made by the direction of a court of competent jurisdiction in a suit duly instituted for the purpose of obtaining such division or apportionment and distribution: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the provision hereinbefore made for the said C. D. shall be in satisfaction and bar of her dower and freebench to which, by the common law, statute, or custom, she might otherwise be entitled, in, from, or out of all or any messuages, lands, tenements, or hereditaments, of or to which the said A. B. now is, or shall, during the said intended coverture, be seised or entitled for any estate of inheritance, or for any other estate to which dower or freebench is incident (*n*): [*Trustees' receipts to*

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

Dower clause.

Trustee clauses.

(*n*) As to what will operate as a bar or satisfaction of dower, see Cru. Dig. by White, Tit. VI. chap. iv.; 2 Sugd. V. & P. chap. xi. sect. 1, 10th ed.; and as to the bar or satisfaction of dower by settling a legal or equitable jointure in the wife, see Cru. Dig. by White, Tit. VII. chap. i., and Sugd. V. & P. ubi supra. With reference to the clause in the text, it is only necessary to observe, that courts of equity now consider that any provision which an adult female accepts before marriage in satisfaction of dower or freebench is binding on her, and is a bar to her claim to dower or freebench; (*Tinney* v. *Tinney*, 3 Atk. 8; *Estcourt* v. *Estcourt*, 1 Cox, 20; *Walker* v. *Walker*, 1 Ves. sen. 54; *Davila* v. *Davila*, 2 Vern. 724; *Glover* v. *Bates*, 1 Atk. 439; *Druce* v. *Denison*, 6 Ves. 385; *Garthshire* v. *Chalie*, 10 Ves. 1; *Corbet* v. *Corbet*, 1 Sim. & Stu. 512; *S. C.* 6 Russ. 524); but a provision, expressed to be in lieu of dower and thirds at common law, does not bar the widow of her distributive share in her husband's undisposed-of personal estate; (*Colleton* v. *Garth*, 6 Sim. 19); and a settlement in lieu of dower is not a bar of thirds. (*Cresswell* v. *Byron*, 3 Bro. C. C. 362). On account, however, of the facility with which dower can be barred since the statutes of the 3 & 4 Will. 4, c. 105, and 3 & 4 Will. 4, c. 74, the clause in the text is seldom now inserted in settlements.

Effect and operation of the clause in bar of the wife's dower.

Before the statute 3 & 4 Will. 4, c. 105, a provision made for the wife after marriage was not a bar of dower, and she could not elect to accept such provision in lieu of dower till after the determination of the coverture. (See 1 Cru. Dig. by White, p. 192; *Frank* v. *Frank*, 3 My. & C. 171).

It appears, that in Scotland a clause barring the "legitim," or the

Clause in bar of

OF PERSONALTY FOR HUSBAND, WIFE, CHILDREN, AND REMOTER ISSUE.

be good discharges, supra, p. 340. Power of appointing new trustees, supra, p. 324. Clauses for the indemnity and payment of the expenses of trustees, supra, pp. 326, 327]. IN WITNESS &c.

---

legitim, under the law of Scotland;

proportionate part of the father's personal estate, is a usual and necessary clause in the marriage settlement of a child, for whom the father, on such marriage, advances a portion. (See *The Marquis of Breadalbane* v. *The Marquis of Chandos*, 2 My. & C. 711). And as it frequently happens that when the husband is an Englishman and settles English property, the marriage settlements of Scotch ladies are prepared in England, the following form of a clause barring legitim is subjoined, although not belonging to the settlement in the text. The clause is understood to have been settled in 1837 by an eminent legal functionary in Scotland, and assumes, as will be seen by its language, that the father has previously made provision by the settlement for the daughter whose legitim it bars.

—form of.

"AND WHEREAS the said [*the wife*] has or may have, by the law of Scotland or by virtue of her father's contract of marriage with her mother, various claims, which may emerge either on the death of her said father, or of her mother during his lifetime, none of which claims it is intended shall subsist or be competent to her or her husband in her right, in respect of the provision now hereby made for her by her father, and which provision is intended to be and is accepted by the said [*wife*] and her said husband in full satisfaction of all such claims, on whatever ground competent; therefore, the said provision so made by these presents by the said [*wife's father*] for the said [*wife*], his daughter, she the said [*wife*], with the consent of the said [*husband*], her promised husband, and he for all right or interest which may arise to him, hereby accepts of and from her said father, in full satisfaction to her and those in her right of all legitim portion, natural executry, and every claim and thing whatever which she can ask or claim by and through the decease of her said father, either by law or by virtue of any clauses or provisions of whatever kind in her mother's marriage contract, or of any former bond or deed of provision executed by her said father in her favour, as also in full satisfaction of all claims for any share of the goods in communion, or of any other claim which may emerge to her on or

VIII.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

SETTLEMENT *of* REVERSIONARY *Interest in* PERSONAL ESTATE, *of an* EXISTING POLICY *of* ASSURANCE *on the Husband's Life, of the* MONEY *to arise by the* SALE *of* LEASEHOLDS *assigned by* DEED *of* EVEN DATE, *of a* SUM *of* MONEY *and Interest secured by the Husband's* COVENANT, *and of a* SUM PAID *by the Wife's Father.* TRUSTS *for* INVESTMENT *and* VARYING SECURITIES, *the Money on the Covenant not to be called in, except by direction, till the Husband's Death.* USUAL TRUSTS *for Wife, Husband, and Children, with the Variations required on account of some of the Funds not being payable till the Husband's Death.* SPECIAL HOTCHPOT, ADVANCEMENT, *and* MAINTENANCE CLAUSES. SPECIAL PROVISIONS *in default of Children.* TRUSTS *as to the* LEASEHOLDS *till Sold.* POWER *to the Husband and Wife to* MAKE SETTLEMENTS *of their respective Shares of the Trust Funds* ON THEIR MARRYING AGAIN, *if there be not more than two Children of the present Marriage.* SPECIAL PROVISOES *as to keeping up the* POLICIES *on the Husband's Life.* POWER *to the* TRUSTEES *to* SETTLE ACCOUNTS *and give Releases.*

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*in-* Parties.

---

by virtue of the death of her mother during the life of her said father, whether by virtue of her mother's contract of marriage, or by law, or on any other ground whatever, of all which claims, in all the events aforesaid, and on all the

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

tended wife], spinster, the only daughter of B. D., of &c., of the second part; the said B. D., of the third part; and E. F., of &c., G. H., of &c., and I. K., of &c., [*trustees*], of the fourth part; [*Recitals, whereby it appeared that, under the settlement made on the marriage of B. D. with his deceased wife, C. D., as one of the four children of the marriage was entitled in reversion, expectant on the death of B. D., to an equal fourth share of a sum of £——, —l. per cent. —— Bank Annuities, and of a policy of assurance on the life of B. D.*]; AND WHEREAS the said A. B. is possessed of or entitled to a policy of assurance on his own life, bearing date the —— day of ——, and effected in his own name with the —— Assurance Office, in the sum of £——, and under the annual premium of £—— (*a*); AND WHEREAS a marriage has been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the sum of £—— to be paid by the said A. B., and the sum of £—— to be paid by the said C. D., should be laid out in the purchase of the messuage or tenement, land, and hereditaments comprised in the indenture of lease hereinafter recited, and of the fixtures in the same messuage or tenement, and that the said messuage or tenement, hereditaments, and fixtures, should be assigned to the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon the trusts and in manner hereinafter mentioned; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed, that the said B. D. should pay to the said E. F., G. H., and I. K., the sum of £——, at or before the solemnization of the said intended marriage, and that the said A. B. should by his covenant secure to the said E. F., G. H., and I. K.,

Recital shewing the wife's interest in property expectant on the death of her father;

—of the husband being possessed of a policy of assurance on his own life;

—of the agreement for the marriage;

—of an agreement that the wife's father and the husband should contribute certain monies to be laid out in the purchase of a leasehold messuage to be settled as after mentioned;

—of an agreement that the husband should secure by his covenant, and the wife's father pay money to the trustees to be settled;

---

above-mentioned grounds, or on any other competent, or which may emerge to her, she, with consent aforesaid, and the said [*husband*], for his own interest, hereby discharges, and his heirs and executors for ever."

(*a*) If the policy be effected for the occasion, it should be in the names of the trustees, supra, p. 370, n. (*b*).

their executors, administrators, and assigns, the sum of £——, with interest for the same, at the rate and in manner hereinafter mentioned, and that the said E. F., G. H., and I. K., their executors, administrators, and assigns, should stand possessed of and interested in the said sum of £——, and the said sum of £——, and the interest thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed, &c., [*recital of the agreement to assign the reversionary interest of the wife under the former settlement, see supra, p. 370*]; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the said A. B. should assign the said policy of assurance on his own life, and the monies to become payable under or by virtue of the same, to the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter declared, expressed, and contained of and concerning the same; [*Recital of a lease granted to A. B. of the messuage, &c., referred to, in consideration of the builder's expenses and the covenants entered into by A. B.; of A. B. having paid the builder £—— as the consideration for the purchase of his interest in the lease, and £—— for the fixtures; of the monies so paid, being the monies agreed to be paid in that behalf by A. B. and C. D. as aforesaid; and of the assignment of the messuage and fixtures by A. B. to the trustees upon trusts for sale, and to stand possessed of the proceeds, upon the trusts declared by the settlement* (*b*)];

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

—of an agreement to settle the wife's reversionary interest;

—and the policy of assurance on the husband's life;

—of the leasehold messuage having been purchased and vested in the trustees in trust for sale—the purchase-money to be held on the trusts declared by the settlement;

(*b*) This transaction, perhaps, needs explanation. The builder contracts for a lease to be granted as soon as he has erected certain buildings. (See supra, Precedent II.). A. B., the building being completed, purchases the benefit of this contract, i. e. purchases the lease, and the lessor, by the builder's direction, grants the lease to A. B.; and A. B., having purchased, with the trust monies, assigns to the trustees upon

An original lease should not be made to trustees.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

AND WHEREAS, in pursuance of the said agreement in this behalf, the said B. D. hath paid the said sum of £—— unto the said E. F., G. H., and I. K. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that in case the said intended marriage shall be had and solemnized, he the said A. B., his heirs, executors, or administrators, shall and will pay unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, the sum of £——, and in case the same sum shall not be paid in the lifetime of the said A. B., shall and will pay interest for the same, at the rate of —*l.* per cent. per annum, from the day of the decease of the said A. B. (*c*). AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, she the said C. D., with the privity and approbation of the said A. B. and also of the said B. D., (testified by their respectively being parties to and sealing and delivering these presents), hath assigned, and by these presents doth assign, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT the undivided fourth part or share, or other the part or share and interest whatsoever of her the said C. D., as one of the four children of the said B. D., and —— his late wife, expectant upon the decease of the said B. D., OF AND IN the said policies of assurance on the life of the said B. D., and

—of the wife's father having paid to the trustees the sum of money agreed to be paid by him.

Witnesseth, covenant by the husband to pay a sum of money with interest from his death.

Witnesseth, further, assignment of the wife's reversionary fourth share expectant on her father's death;

—in a policy of assurance on his life;

the trusts agreed on. The builder directs the lease to be made to A. B., because he thereby avoids himself entering into the covenants required from the lessee; and the trustees require A. B. to be the original lessee for a similar reason. A. B., as the original lessee, always remains personally liable on the covenants; but the trustees, as assignees, are only responsible for acts or defaults done or made during the continuance of their interest. (See ante, Vol. 1, Art. LEASES).

(*c*) As to the superiority of a covenant to a bond for purposes of this nature, see supra, p. 386, n. (*o*).

of and in all monies to arise or be received under or by virtue of the same policy, AND ALSO of and in the said capital sum of £——, —*l.* per cent. —— Bank Annuities standing in the names of the said —— and ——, or the trust monies, stocks, funds, or securities to arise from or be substituted for the same, or any part thereof, AND ALL THE ESTATE, &c.: TO HAVE, HOLD, receive, and take the said premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively: [*Covenants by husband and wife for right to assign, and for further assurance, supra, p. 372*]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said A. B., with the privity and approbation of the said C. D., and also of the said B. D., (testified by their respectively being parties to and sealing and delivering these presents), hath assigned &c., [*Assignment of a policy of assurance on A. B.'s life to the trustees, ante, Vol. 3, p. 370*: "Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter declared, expressed, and contained of and concerning the same respectively:" [*Covenants by A. B. that the policies are good—for right to assign—and for further assurance, ante, Vol. 3, p. 372 et seq.*]: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said one fourth part or share, and all and singular other the premises hereinbefore assigned by the said C. D., or expressed or intended so to be, and of and in the said sum of £—— so paid to the said E. F., G. H., and I. K. as aforesaid, and of and in the said policy of assurance, sums and sum of money, and all and singular other the premises hereinbefore assigned by the said A. B., or

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

and in a sum of stock.

Habendum to the trustees.

Covenants for title.

Witnesseth, further, assignment of the policy of assurance on the husband's life to the trustees.

Covenants for title.

Declaration of trusts;

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

expressed and intended so to be; and of and in the monies to be produced by the sale of the said messuage or tenement, land and premises, and fixtures, And of and in the said sum of £—— secured by the covenant of the said A. B., UPON AND FOR the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively, (that is to say), AS TO, FOR, AND CONCERNING the said one fourth part or share, and all and singular other the premises hereinbefore assigned by the said C. D., or expressed or intended so to be, and the interest, dividends, and annual proceeds thereof, In trust for the said C. D., her executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized; AND AS TO, FOR, AND CONCERNING the said sum of £——, [*the sum paid by B. D.*], In trust for the said B. D., his executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized; AND AS TO, FOR, AND CONCERNING the said policy of assurance, sum and sums of money, and all and singular other the premises hereinbefore assigned by the said A. B., or expressed and intended so to be, and the said sum of £—— secured by the covenant of the said A. B., and the interest and annual produce of the same trust premises respectively, IN TRUST for the said A. B., his executors, administrators, and assigns, in the meantime and until the said intended marriage shall be had and solemnized, AND FROM AND AFTER the solemnization of the said intended marriage, AS TO, FOR, AND CONCERNING the said one fourth part or share, and all and singular other the premises hereinbefore assigned by the said C. D., or expressed or intended so to be, and the said sums and sum of money, and all and singular other the premises hereinbefore assigned by the said A. B., or expressed and intended so to be, Upon trust, that they the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, do and shall, as soon as conveniently may be after the decease of the said B. D., as to the said fourth part or share, and all and singular other

—for the different persons to whom the funds respectively belong, until marriage.

After the marriage.

Trusts for calling in, investing, and varying the securities as to such of the property as is outstanding on security;

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

the premises hereinbefore assigned by the said C. D., or expressed and intended so to be, and as soon as conveniently may be after the same shall become payable, as to the sums and sum of money hereinbefore assigned by the said A. B., or expressed and intended so to be, call in or convert the same into money, And do and shall lay out and invest the money to arise by such calling in and conversion into money, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland (*d*); And do and shall from time to time, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and, after the decease of such survivor, at the discretion of the said trustees or trustee for the time being, alter, vary, or transpose the same stocks, funds, or securities, as to them or him shall seem meet (*e*); AND AS TO, FOR, AND CONCERNING the said sum of £——, [*the money paid to the trustees*], and the said sum of £——, secured by the said covenant of the said A. B., and the monies to be produced by the sale of the said messuage or tenement, lands and premises, and fixtures, Upon trust, that they the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, do and shall, as to the said sum of £——, [*the money paid*], as soon as conveniently may be after the solemnization of the said intended marriage, and as to the said sum of £——,

—and for calling in, investing, and varying securities as to such of the property as consists of money.

(*d*) See supra, p. 312, n. (*e*).

(*e*) See the observations with respect to trusts for investment and varying securities, supra, p. 313, n. (*f*). The draftsman will observe, that in the present trust the consent of the tenants or tenant for life is required only for varying the securities, and not [for the original investments also according to the usual form]. The reason given for this is, that if the consent be required for the original investment, and the trustees and the party to consent differ in opinion on the subject, no investment at all can be made. This, however, (looking to the interest which the tenant for life has that an investment should be made), is not a case which there seems much need to guard against; and the editor is, therefore, disposed to adhere to the usual form of trust.

Whether the consent of the tenant for life should be required for the investment of trust monies.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

[*the money covenanted to be paid*], and the said proceeds of sale, when and so soon as the same shall have been received, lay out or invest the same in their or his names or name in or upon any such stocks, funds, or securities, as are hereinbefore mentioned; And do and shall from time to time, with such consent or at such discretion as aforesaid, alter, vary, or transpose the same stocks, funds, or securities, as to them or him shall seem meet: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall not be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, to compel payment of the said sum of £—— so as aforesaid secured by the said covenant of the said A. B., until the decease of the same A. B., unless required so to do by the said C. D. by writing under her hand during her life, or, in case of her decease in the lifetime of the said A. B., with the concurrence of all the trustees for the time being of these presents, if there shall be more than one such trustee (*f*): AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall, from and after the solemnization of the said intended marriage, stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively, (that is to say), AS TO, FOR, AND CONCERNING the said one fourth part or share, and all and singular other the premises hereinbefore assigned by the said C. D., or expressed and intended so to be, and the monies to arise and be produced by the calling in or conversion into money of the same, and the stocks, funds, or securities in or upon which such monies shall be laid out or invested, and the

Trustees not to call in during the husband's life the money on his covenant, unless directed so to do by the wife, or unless, after her death, all the trustees concur.

Trusts of the funds;

—as to part, to pay the income to the separate use of the wife for life during the joint lives of husband and wife;

(*f*) With respect to the effect of provisoes of this nature in case of the obligor becoming bankrupt, see the cases cited supra, p. 396, n.

said sum of £——, [*the money paid*], and the stocks, funds, or securities in or upon which the same shall be laid out or invested, and the monies to be produced by the sale of the said messuage or tenement, land and premises, and fixtures, and the stocks, funds, or securities in or upon which such monies shall be laid out or invested, and the interest, dividends, and annual produce of all the said trust monies, stocks, funds, and securities, UPON TRUST, that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, during the joint lives of the said A. B. and C. D., from time to time pay the interest, dividends, and annual produce of the same trust premises into the hands of the said C. D. for her sole and separate use and benefit, independently and exclusively of the said A. B., and without being in anywise subject to his debts, control, interference, or engagements, And the receipts of the said C. D., notwithstanding her coverture, to be from time to time sufficient discharges for the same; but so, nevertheless, that the said C. D. shall not have power to dispose of or affect the same, or any part thereof, by any sale, mortgage, or charge, or otherwise in the way of anticipation (*g*); AND DO AND SHALL, from and after the decease of either of them the said A. B. and C. D., pay the interest, dividends, and annual produce of the same premises unto, or permit the same to be received by, the survivor of them the said A. B. and C. D., or his or her assigns, for his or her life; AND AS TO, FOR, AND CONCERNING the said sum of £—— so as aforesaid secured by the said covenant of the said A. B., and the stocks, funds, or securities in or upon which the same shall be laid out or invested, and the interest, dividends, and annual produce thereof, UPON TRUST, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall pay the interest, dividends, and annual produce of the same trust premises unto, or permit the same to be received by, the said A. B. and his assigns during his life, in case the

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

—and after the death of either, to the survivor for life;

—and as to the money secured by the husband's bond,

—if it become payable during his life, to pay the income to him for life;

(*g*) See a different form of this trust, supra, p. 315, and p. 316, n. (*g*).

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

said sum of £—— shall be paid by him in his lifetime; And in the event of the said C. D. surviving the said A. B., As TO, FOR, AND CONCERNING the last-mentioned trust premises, and in the same event, As TO, FOR, AND CONCERNING the sum of £——, part of the sums and sum of money to become payable under or by virtue of the said policy of assurance hereinbefore assigned by the said A. B., or expressed and intended so to be, and the stocks, funds, or securities in or upon which such sum of £—— shall be laid out or invested, and the interest, dividends, and annual produce thereof, UPON TRUST, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall pay the dividends, interest, or annual produce of the same trust premises unto, or permit the same to be received by, the said C. D. and her assigns during her life (*h*): AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the hereinbefore-mentioned trust monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, subject and without prejudice to the trusts hereinbefore declared, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same, (that is to say), IN TRUST for all and every &c.: [*Usual trusts for children, as husband and wife or survivor shall appoint, and in default, equally, supra, p.* 317 *et seq.*]: PROVIDED ALWAYS, that in the event of the said C. D. surviving the said A. B., the power of appointment lastly hereinafter contained shall not be exercised by her, as to any part of the money which shall have become payable upon or by virtue of the policy of assurance hereinbefore

—and after his death, to pay the income of that and of the money to be payable on the policy on his life to the wife for life.

Trusts for the children of the marriage.

Proviso, that if wife survive she shall not appoint certain of the trust funds so as to divest children's interests

(*h*) It is more convenient to declare trusts of monies of this nature separately and by reference to the principal trusts than to include them in the declaration of the principal trusts; see supra, p. 383, n. (*p*), and the form to which the note refers.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

assigned by the said A. B., or expressed and intended so to be, or the stocks, funds, or securities in or upon which the same shall have been laid out or invested, (except as to the said sum of £——, and the stocks, funds, or securities in or upon which the same shall have been laid out or invested), so as to divest any interest or interests which shall have become absolutely vested in any child or children of the said intended marriage under the trust in default of appointment hereinbefore contained: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that, in default of any such direction or appointment as aforesaid to the contrary, no child taking any part of the stocks, funds, or securities, the trusts whereof are hereinbefore declared, under or by virtue of any direction or appointment to be made by the said A. B. and C. D. jointly or by the survivor of them, in pursuance of either of the powers or authorities hereinbefore in that behalf contained, shall have or be entitled to any further or other share in that part of the same trust premises of which no such direction or appointment shall have been made, without bringing his or her appointed share or shares into hotchpot, and accounting for the same accordingly (*i*): PROVIDED ALWAYS, that, in the event of the said C. D. surviving the said A. B., the proviso, agreement, and declaration lastly hereinbefore contained, shall not postpone the actual payment or transfer unto any child of the said intended marriage, who, being a son, shall have attained the said age of twenty-one years, or, being a daughter, shall have attained the age of twenty-one years, or married under that age with such consent as aforesaid, of the share (if any) to which such child shall, under the trusts hereinbefore declared in default of appointment, have become entitled, of the monies to become payable under or by virtue of the said policy of assurance hereinbefore assigned by the said A. B., or expressed or intended so to be, after setting apart the said sum of £——, part thereof, or of the stocks, funds, or securities in or upon which such residue shall have been

then already vested in default of appointment.

Hotchpot clause (ordinary).

Special hotchpot clause as to the shares of those children as to which the wife's power of appointment is restricted.

(*i*) As to the object of the hotchpot clause, see supra, p. 319, n. (*k*).

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

laid out or invested, but, upon the decease of the said C. D., the share which shall have been paid or transferred to any child of the same trust premises shall, in case such child shall elect to take under any appointment or appointments which shall have been made under the powers of appointment hereinbefore contained, or either of them, be refunded and brought into hotchpot, and accounted for accordingly, and shall be applied in all respects as the same would have been applicable in case such child had not attained the said age, or, being a daughter, married as aforesaid, in the lifetime of the said C. D.: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, at any time or times after the decease of the survivor of them the said A. B. and C. D., or in the lifetime of them or of the survivor of them, in case they, he, or she shall so direct, by any writing or writings under their, his, or her hands or hand, to levy and raise any part or parts of the then expectant or presumptive or then vested share or shares of any child or children of the said intended marriage under the trusts hereinbefore declared, not exceeding in the whole, for any one such child, one moiety or equal half part of his or her then expectant or presumptive or then vested share, and to pay and apply the same for or towards his, her, or their preferment or advancement or benefit respectively, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit; but so that in the event of no child of the said intended marriage attaining a vested interest in the said trust monies, stocks, funds, and securities under the trusts hereinbefore declared, and of all such trust monies, stocks, funds, and securities not becoming vested under the trusts hereinafter declared in the same person or persons, the amount which shall have been advanced under the present provision shall be ultimately apportioned among the several

Advancement clause;

—with special provision.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

funds of which the said trust monies, stocks, funds, and securities are made up, according to the respective values of such funds (*k*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that, from and after the decease of the survivor of them the said A. B. and C. D., as to all and singular the said trust monies, stocks, funds, and securities, and in the event of the said C. D. surviving the said A. B., after the decease of the said A. B., and during the life of the said C. D., AS TO THE RESIDUE of the monies to become payable under or by virtue of the said policy of assurance hereinbefore assigned by the said A. B., or expressed and intended so to be, (after setting apart the said sum of £——, part thereof), and the stocks, funds, or securities in or upon which such residue shall be laid out or invested, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, at their or his discretion, pay or apply the whole or such part as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall from time to time think fit, of the interest, dividends, and annual produce of the share or respective shares to which any child or children of the said intended marriage shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared, for or towards the maintenance and education of such child or children respectively, in the meantime, and until such his, her, or their share or shares shall become vested or payable (*l*): AND DO AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate all the surplus or residue, if any, of the interest, dividends, and annual produce of each such last-mentioned expectant share, by investing the same, and all the resulting income and produce thereof, &c.: [*Accumulation clause supra, p.* 321]: PROVIDED ALWAYS, and it is hereby agreed

Maintenance clause, (special).

Accumulation clause.

Trusts in de-

(*k*) As to the object of the advancement clause, see supra, p. 320, n. (*l*).

(*l*) As to the object of the maintenance and accumulation clauses, see supra, p. 321, n. (*m*).

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

and declared between and by the parties to these presents, that if there shall be no child of the said A. B. by the said C. D., who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry with such consent as aforesaid (*m*), then and in such case the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall, subject and without prejudice to the trusts hereinbefore declared, stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes hereinafter declared and expressed of and concerning the same respectively, (that is to say), As TO, FOR, AND CONCERNING the said fourth part or share, and all and singular other the premises hereinbefore assigned by the said C. D., or expressed and intended so to be, and the monies to arise and be produced by the calling in or conversion into money of the same, and the stocks, funds, or securities in or upon which such monies shall have been laid out or invested, and the said sum of £——, [*the money paid by the wife's father*], and the stocks, funds, or securities in or upon which the same shall have been laid out or invested, and such a share of the monies produced by the sale of the said messuage or tenement, land and premises, and fixtures, as shall bear a proportion to the whole of such monies as the said sum of £——, so as aforesaid paid by the said B. D., bears to the said sum of £——, and the stocks, funds, or securities in or upon which such share of such proceeds of sale shall have been laid out or invested, and the interest, dividends, and annual produce of all the same trust premises respectively, or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers hereinbefore declared and contained, upon the trusts following, (that is to say), [*In trust for the wife ab-*

fault of children becoming entitled.

As to the wife's property, and the money paid by her father, and a proportionate part of the monies to be produced by a sale of the leasehold house;

(*m*) See supra, p. 322, n. (*n*). In this case daughters were not to become entitled to a share on marriage unless they married with the consent of their parents or guardians.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

solutely, if she survive the husband, but if she die in his lifetime, as she shall by will appoint, and, in default of appointment, for the husband absolutely, supra, p, 322]: AND AS TO, FOR, AND CONCERNING the said policy of assurance, sums and sum of money, and all and singular other the premises hereinbefore assigned by the said A. B., or expressed and intended so to be, and the stocks, funds, or securities in or upon which such sums or sum of money shall be laid out or invested, and such share of the monies produced by the sale of the said messuage or tenement, land, and premises and fixtures, as shall bear such a proportion to the whole of such monies as the said sum of £——, so as aforesaid paid by the said A. B., bears to the said sum of £——, so as aforesaid paid as the purchase-money of the said premises and fixtures, and the stocks, funds, or securities in or upon which such share of such proceeds of sale shall have been laid out or invested, and the said sum of £—— secured by the said covenant of the said A. B., and the stocks, funds, or securities in or upon which the same shall have been laid out or invested, and the interest, dividends, and annual produce of all the same trust premises respectively, or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein declared or contained, upon the trusts following, (that is to say), IF THE SAID A. B. shall survive the said C. D., In trust for the said A. B., his executors, administrators, and assigns; BUT IF THE SAID A. B. shall die in the lifetime of the said C. D., then in trust for such person or persons, and for such intents and purposes, as the said A. B. shall, by his last will and testament in writing, or any codicil or codicils thereto, direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, in trust for the said C. D., her executors, administrators, and assigns: AND IT IS HEREBY AGREED, &c. [*the rents and profits of the leasehold messuage and fixtures, until sold, to go as income of the purchase-money, supra, p. 366, and infra, p. 432*]: PROVIDED ALWAYS, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor

And as to the residue of the funds;

—in trust for the husband if he survive his wife;

—but if he die in his wife's lifetime, as he shall by will or codicil appoint;

—and in default of appointment, to the wife.

Rents of leasehold to go as income of purchase-money.

But the wife to occupy the leasehold as her

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

of them, and the executors or administrators of such survivor, and they and he are and is hereby required to allow the said C. D. to occupy, use, and enjoy the said messuage or tenement, and fixtures, as her own sole and separate property, when and so long as she shall think proper so to do: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said A. B. shall die in the lifetime of the said C. D., it shall be lawful for the said C. D., at any time or times after the decease of the said A. B., and whether she shall be married or single, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, to direct or appoint, THAT IF THERE SHALL NOT be more than one child of the said intended marriage, who, being a son, shall live to attain the age of twenty-one years, or, being a daughter, shall attain that age or marry with such consent as aforesaid, then the interest, dividends, and annual produce of all or any part or parts of the said fourth part or share, and of all and singular other the premises hereinbefore assigned by the said C. D., or expressed and intended so to be, and the monies to arise and be procured by the calling in or conversion into money of the same, and the stocks, funds, and securities in or upon which the same shall have been laid out or invested, and of the said sum of £——, and the stocks, funds, or securities in or upon which the same shall have been laid out or invested, and of such a share of the monies produced by the sale of the said messuage or tenement, land, and premises and fixtures, as shall bear such a proportion to the whole of such monies as the said sum of £——, so as aforesaid paid by the said B. D., bears to the said sum of £——, and the stocks, funds, or securities in or upon which such part of such proceeds of sale shall have been laid out or invested; AND IF THERE SHALL be two such

separate property as long as she pleases.

Power for the wife, if she survive the husband, to appoint to a second husband;

—if there be but one child of the first marriage, the whole income of her share of the trust funds;

—if there be

children and no more, then the interest, dividends, and annual produce of any part or parts, not exceeding two-thirds of the same trust monies, stocks, funds, and securities shall be paid after the decease of the said C. D. to any husband whom she may marry after the decease of the said A. B., and who may survive her, for the life of such husband; AND BY THE SAME or any other deed or deeds, or instrument or instruments in writing, with or without power of revocation and new appointment, to be executed and attested as aforesaid, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, to direct or appoint, THAT IF THERE SHALL NOT be more than one child of the said intended marriage, who, being a son, shall live to attain the age of twenty-one years, or, being a daughter, shall attain that age or marry with such consent as aforesaid, then all or any part or parts of the same trust monies, stocks, funds, and securities; AND IF THERE SHALL BE two such children, and no more, then any part or parts, not exceeding two-thirds of the same trust monies, stocks, funds, and securities, (but subject, as to the interest, dividends, and annual produce thereof, or of any part or share or parts or shares thereof respectively, to any such appointment or appointments as may be made by the said C. D. for the benefit of any husband whom she may marry after the decease of the said A. B., in exoneration, as far as the same shall from time to time extend, of the other part or share or parts or shares, (if any), of and in the same trust monies, stocks, funds, and securities), shall be paid, transferred, and assigned, after the decease of the said C. D., to any person or persons, IN TRUST for all and every, or such one or more, exclusively of the other or others of the child or children of the said C. D., by any such after-taken husband or husbands, on or at such age, day, or time, or respective ages, days, or times, and, if more than one, in such shares and proportions, and with such provisions for their respective maintenance and education or advancement, and with such annual sums of money and limitations over, for the benefit of some or one of such last-mentioned children, and

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

two children of the present marriage, two-third parts of such income;

—and to appoint to the children of such second marriage;

—the capital of such trust funds, if there be but one child of the first marriage;

—and two third parts of such capital, if there be two children of the first marriage;

—with power to settle the same on such second husband and children.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

with such trusts and directions as to the investment of trust monies, and the variation of securities, and upon such conditions, with such restrictions, and in such manner and form as she the said C. D. shall think proper, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared, that any such direction or appointment or directions or appointments as aforesaid may be made or executed by the said C. D. under either of the aforesaid powers enabling her in that behalf, either before or after the event on which the same respectively is or are to take effect shall be ascertained: PROVIDED ALWAYS, and it is hereby further agreed and declared, that the interest, dividends, and annual produce of no greater share of the same trust monies, stocks, funds, and securities, than two-third parts or shares thereof, shall become or be payable to any such after-taken husband as aforesaid, before such default or failure as aforesaid of there being more than one child of the said intended marriage, who, being a son, shall live to attain the age of twenty-one years, or, being a daughter, shall live to attain that age or marry with such consent as aforesaid: PROVIDED ALWAYS, that, subject and without prejudice to any direction or appointment or directions or appointments which may be made by the said C. D. in favour of any such after-taken husband as aforesaid, or of any child or children of her the said C. D. by any such after-taken husband or husbands as aforesaid, under or by virtue of the powers hereinbefore in that behalf contained, the trust premises of which any such direction or appointment or directions or appointments shall be made as aforesaid, shall remain and be held upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, agreements, and declarations herein declared, expresssed, and contained of and concerning the same, as shall be subsisting or capable of taking effect (*n*): [*Similar power for the husband, if he survives the wife, as to*

Such powers may be exercised either before or after the event in which they are to take effect be ascertained.

But such appointments not to take effect as to more than two-third parts of the aforesaid trust funds, till the default has actually happened of there not being more than one child of the first marriage.

Proviso, that, subject to the appointments under the last-mentioned powers, the present settlement shall hold good.

Similar powers to the husband.

(*n*) See a power of a similar nature, supra, p. 378, and general powers of appointment as to part of the funds, to take effect if only one child of the marriage become entitled, supra, p. 401.

his share of the trust funds.—Power for the trustees to divide and apportion the funds, if they have become blended, supra, p. 402.—Dower clause, supra, p. 403.] AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that, in case the said intended marriage shall take effect, he the said A. B. shall and will thenceforth from time to time during his life duly and punctually pay or cause to be paid the said annual premium of £——, payable upon the said policy of assurance hereinbefore assigned by him, or expressed and intended so to be, on the day when the said premium shall from time to time become due and payable; And also, such other sum or sums of money (if any) as shall or may from time to time become payable, in order to keep the said policy on foot, or in case the same policy shall have become void or voidable, in order to restore the same or the assurance thereby intended to be made to full force, or to effect and keep on foot a new assurance for the like amount in lieu of any policy which shall have become void and cannot be restored; and shall and will deliver the receipt for every such payment to the trustees or trustee for the time being of these presents; and shall not nor will, at anytime hereafter, do or suffer, or cause to be done or suffered, any act or thing whatsoever, whereby or by reason or means whereof the said policy hereby assigned, or expressed and intended so to be, or any assurance to be effected under the covenant in that behalf hereinbefore contained, shall or may be rendered void, or the right of the said E. F., G. H., and I. K., their executors, administrators, or assigns, to receive the monies thereby assured, can or may in anywise be prejudiced, and shall and will, in case the said policy hereby assigned, or expressed and intended so to be, or any assurance to be effected under this present covenant, shall become void or voidable, forthwith restore the same, if practicable, and, if the same cannot be restored, effect a new assurance in lieu thereof in the like amount in the same office, or in some other office to be approved of by the said trustees or trustee for the time being of these presents, and forth-

Trustees to apportion funds. Dower clause. Covenants by the husband to keep up the assurance on his life.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

with deliver the new policy to such trustees or trustee: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, to pay or cause to be paid the said annual premiums upon the policy of assurance hereinbefore assigned, or expressed and intended so to be, or upon any new policy in lieu thereof, or any other sum or sums of money which it shall be necessary to pay, in order to keep any such policy on foot, or to restore any policy which may have become void or voidable, or to effect any new policy in lieu of any policy which shall have become void and which cannot be restored, by and out of the dividends, interest, and annual produce of the hereinbefore mentioned trust monies, stocks, funds, and securities, or any part or parts thereof, or, if necessary, by and out of the said trust monies, stocks, funds, and securities, or any part or parts thereof: PROVIDED ALWAYS, that, during the joint lives of the said A. B. and C. D., the interest, dividends, and annual produce of the said sum of £——, if the same shall have been paid by the said A. B., and of the stocks, funds, or securities in or upon which the same shall have been laid out or invested, and the same stocks, funds, or securities shall be primarily applicable for the last-mentioned purposes; PROVIDED ALSO, that if any interest, dividends, or annual produce to which the said A. B. or his assigns would not have been entitled, or any part or parts of the said trust monies, stocks, funds, and securities, shall be applied for the last mentioned purposes, or any of them, the said A. B., his heirs, executors, or administrators, shall be bound forthwith to repay and replace the same respectively; and such application shall not be a dispensation with any breach or breaches of the covenant hereinbefore entered into by the said A. B., and such interest, dividends, or annual produce, or trust monies, stocks, funds, and securities, shall be a charge upon, and the same are hereby expressly henceforth constituted a continuing charge upon all dividends or annual produce, and every share (if any) of the said trust monies, stocks, funds, and securities in or to which the said A. B., his

Declaration that if he fail to do so, the trustees may apply the trust income or capital for that purpose.

The funds belonging to the husband to be primarily applicable for keeping up the assurance.

—and any payments out of the other funds to be made good by the husband.

executors, administrators, or assigns, may at any time thereafter become interested or entitled (*o*): AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, further covenant with the said E. F., G. H., and I. K., their executors, administrators, and assigns, that he the said A. B., his executors or administrators, shall and will, at all times during the continuance of the said term created by the hereinbefore recited indenture of lease, until the said leasehold premises shall have been sold, pay the yearly rents reserved by the same indenture, and perform and observe all and every the covenants and agreements in the said indenture contained, which, on the part of the tenant or lessee, from henceforth, are or ought to be performed and observed; PROVIDED ALWAYS, and it is hereby agreed and declared, that all monies which shall be paid or expended by the said A. B., his executors or administrators, in or about the payment of such rents or the performance of such covenants, except any monies which may be laid out in rebuilding or reinstating the said messuage or tenement in case of fire, shall be repaid to him or them out of the interest, dividends, and annual produce of the stocks, funds, and securities, the interest, dividends, and annual produce whereof are hereinbefore directed to be paid to the said C. D., after the solemnization of the said intended marriage, and that so much of any monies which may be laid out in rebuilding or reinstating the said messuage or tenements in case of fire, as shall not be covered by an insurance, shall be repaid to the said A. B., his executors or administrators, out of the capital of the said sum of £——, or the stocks, funds, or securities in or upon which the same shall have been laid out or invested: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the trustees or trus-

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

Covenant by the husband to pay the rent and perform the covenants in respect of the leaseholds until sold;

—but such payments to a certain extent to be made good to him out of the wife's trust funds.

Trustees not to be liable for not keeping up the policies of assurance.

(*o*) See the covenants and provisoes relating to policies of assurance supra, p. 384. They differ slightly from those in the text. See, too, the clause infra, exonerating the trustees from the liability to keep up the assurance.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

tee for the time being of these presents shall not be in anywise chargeable for a breach of trust for any omission to enforce the covenants hereinbefore entered into by the said A. B. or any of them, or to apply any interest, dividends, or annual produce, stocks, funds, or securities, for any of the purposes for which they are authorized to apply the same under the power and direction in that behalf hereinbefore contained, the said trustees, parties hereto, having accepted the trusts aforesaid upon the express condition that they shall not be liable in respect of any such omission (*p*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, to compromise or compound any action, suit, or proceeding, which may be brought, instituted, or taken, in anywise relating to the said trust premises, or any part thereof, and to accept any sum or sums of money that may be offered by way of compromise or composition, whether any such action, suit, or other proceeding shall have been commenced, instituted, or taken, or not, and to refer any dispute or difference in anywise relating to any part of the said trust premises to arbitration or reference, and to do all acts, and execute all instruments necessary for such purpose, AND, in all cases in which any question of law or equity shall arise in relation to any part of the said trust premises, to settle and arrange the same in such manner as they or he shall be advised by their or his counsel, and to abandon or relinquish any claim in relation to any part of the said trust premises which their or his counsel shall advise them or him so to do, and to adjust, settle, and approve all accounts in relation to the said trust premises or any part thereof, and in doing so to settle as to whether any money ought to be, and shall be, considered annual income for the purposes of this present

Power to the trustees to compound, arrange, and settle accounts.

(*p*) See the clause for the same object, supra, p. 386, exonerating the trustees in an ampler manner, and see p. 387, n. (*q*).

indenture or otherwise, and such accounts so settled shall, to all intents and purposes, be final and conclusive, and shall be deemed and taken to be settled accounts, and generally to compromise, settle, and adjust all claims, accounts, demands, and questions in anywise relating to, affecting, or arising as to the said trust premises or any part thereof, and to execute and perform all acts, deeds, matters, and things in relation to the said trust premises, or any part thereof, as fully and absolutely, to all intents and purposes, as the said trustees or trustee could or might do, in case they or he were or was the absolute owners or owner of the said trust premises (*q*). [*Trustees' receipt clause, supra, p. 323.—Clause for the appointment of new trustees, supra, p. 324.—Clause for indemnity and reimbursement of trustees, supra, pp. 326, 327*]. IN WITNESS &c.

OF PERSONALTY IN POSSESSION AND REVERSION, WITH SPECIAL CLAUSES.

Trustee clauses.

(*q*) The common power to the trustees to give receipts only enables them to give a discharge for monies actually paid to them; it confers no authority to settle and arrange accounts or matters in dispute, or to give general releases on the payment of the money estimated to be payable. Thus, in the present case, it would empower them to give a release for the monies actually paid them by the trustees of the wife's father's settlement; but it would not enable them to examine and settle the accounts of those trustees, and give them a general release in respect of their dealings with their trust funds. Hence it is not unusual, and is very convenient, when choses in action, whether reversionary or otherwise, are the subject of settlement, to empower the trustees, not only to give a receipt for the money paid them, but to decide that the money so paid was that to which they were entitled, i. e. to examine the accounts and dealings of the parties who have to make the payment, and, if satisfactory, to give them a complete release in the same manner as the beneficial owners could do. The power in the text is very extensive, and authorizes the trustees to enter into compromises and compositions, and to refer matters to arbitration, and to act in every respect as the absolute owners. These additional powers may obviously be useful, and will seldom injure the cestuis que trust; for the discretion thus given to the trustees is like any other discretion given them, only to be exercised in a proper and prudent manner, and the trustees must at their own peril act as an absolute owner of sound judgment would act in similar circumstances for his own advantage. The additional power is not an additional protection, but an additional burden to the trustees.

Advantage and effect of giving trustees a power to settle accounts and arrange disputes.

IX.

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

SETTLEMENT *of the* PURCHASE MONEY *of* REAL ESTATE *conveyed in* TRUST *for* SALE *by the* SAME DEED(*a*). TRUSTS *for the* HUSBAND *for Life; for the* WIFE *for Life, or for* WIDOWHOOD *only if there be Issue of the Marriage; for the* CHILDREN *as* HUSBAND *shall appoint, with usual Trusts in default of Appointment.* IF NO CHILD *the Fund to belong to the* HUSBAND. RENTS *and* PROFITS *till Sale to be applied as the Interest of the Purchase Money would be applicable.* POWER OF LEASING.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part.

Recital of agreement for marriage.

WHEREAS a marriage has been agreed upon, and is intended shortly to be had and solemnized, between the said A. B. and C. D.;

—and of the agreement for the settlement.

AND WHEREAS, on the treaty for the said intended marriage it was, (among other things) agreed, that the said A. B. should convey and assure and settle the messuage, lands, and hereditaments, hereinafter particularly men-

Case in which real estate may be conveyed in trust for sale by the settlement.

(*a*) It is always expedient to convey real estate to the trustees of a settlement upon trust for sale by a separate deed of even date with, but executed before the settlement. See, supra, p. 333, n. (*u*). But, occasionally, from the smallness of the estate, and the narrow means of the parties, the additional expense of a separate deed is objected to, and therefore a precedent is given in the text in which the settlement and conveyance is made by the same deed. This plan, however, is never to be adopted unless there is an express prohibition to frame two deeds. Instructions are often given in cases of this kind for one deed, but as this generally happens from want of acquaintance with the subject, the conveyancer proceeds in the usual way and prepares two deeds, unless the instructions expressly forbid him so to do.

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

tioned, and intended to be hereby released, To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, he the said A. B., with the privity of the said C. D., (testified by her being a party to and executing these presents (*b*)), hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the said E. F. and G. H., (in their actual possession, &c., *ante, Vol. 3, p.* 198), and to their heirs, all that messuage, &c., [*parcels—general words*], To HAVE AND TO HOLD the said messuage, piece or parcel of land, and hereditaments, and all and singular other the premises hereby granted and released, or expressed and intended so to be, unto the said E. F. and G. H., their heirs and assigns, To THE USE of the said A. B. and his heirs until the solemnization of the said intended marriage, AND FROM AND AFTER the solemnization thereof, To THE USE of the said E. F. and G. H., their heirs and assigns, for ever, UPON TRUST, that they the said E. F. and G. H., and the survivor of them, and the heirs of such survivor, do and shall at any time or times after the solemnization of the said intended marriage, (but with the consent in writing of the said A. B. during his life, or with the consent in writing of the said C. D., in case she shall survive the said A. B., if there shall be no child of the said intended marriage living at the death of the said A. B., during her life, or if there shall be a child or children of the said intended marriage living at the death of the said A. B., during so long as she shall continue a widow and unmarried), absolutely sell, &c., [*trust for sale, supra, p.* 346], AND DO AND SHALL stand and be possessed of and interested in all the money to arise from such sale or sales, UPON TRUST, that they the said E. F. and G. H., and the survivor of them, and the heirs of such survivor, do and shall, (but during the lives or

Witnesseth.

Conveyance by husband of freehold hereditaments.

Habendum to the trustees.

—to the use of husband till marriage.

—and afterwards to the use of the trustees.

Upon trust to sell.

—and invest the purchase-money.

(*b*) See supra, p. 310, n. (*d*).

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

period aforesaid with such consent as aforesaid), lay out and invest the same in the names or name of them the said E. F. and G. H., or the survivor of them, or the executors or administrators (*c*) of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland), and from time to time alter, vary, and transpose the same into or for other stocks or securities of the same or a like nature, at their or his discretion, to be held upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter declared, expressed, and contained of and concerning the same: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter contained, (that is to say), UPON TRUST, that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall pay the said interest, dividends, and annual proceeds of the said trust monies, stocks, funds, and securities to, or permit the same to be received by, the said A. B. and his assigns during his life, AND AFTER his decease, in case there shall be no child of the said intended marriage then living, do and shall pay the said interest, dividends, and annual proceeds to, or permit the same to be received by, the said C. D. and her assigns during

Declaration of trust of the funds:

—to pay the income to the husband for life;

—and after his death to the wife —for her life if there be no surviving child of the marriage.

(*c*) The estate being real estate, the heirs of the survivor of the trustees must be the parties to sell; but the investment is made in the names of his executors or administrators as more convenient and more conformable to the nature and subsequent devolution of personal estate. See supra, p. 359, n. (*f*).

her life, BUT IN CASE the said A. B. shall die, leaving a child or children of the said intended marriage him surviving, do and shall pay the said interest, dividends, and annual proceeds to, or permit the same to be received by, the said C. D. and her assigns for her life or until she shall again marry; AND FROM AND AFTER the determination of the trust hereinbefore declared for the benefit of the said C. D., whether such determination shall happen by her death or by her second marriage, do and shall stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every or such one or more exclusively of the other or others of the children of the said intended marriage, at such age, day, or time, or respective ages, days, or times, if more than one, in such parts, shares, and proportions, and with such annual sum or sums of money and future or executory or other trusts over, such annual sum or sums of money and future or executory or other trusts over being for the benefit of some or one of the said children, and with such provision for their respective maintenance and education or advancement, and upon such conditions, with such restrictions, and in such manner as the said A. B. shall from time to time, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament, or any codicil or codicils thereto, direct or appoint; AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST &c. [*for all the children equally, supra, p.* 318. *Hotchpot clause, supra, p.* 319, *referring, however, only to a single power.—Advancement, maintenance, and accumulation clauses, altering the two former to suit the nature of C. D.'s interest, see supra, pp.* 319—321, *and also pp.* 377, 378]: PROVIDED ALWAYS, and it is hereby declared and agreed between and by the parties to these presents, that if there shall be no child of the said intended marriage, who, being a son, shall attain the age of

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

—and for her widowhood only if there be a surviving child.

—after determination of preceding trusts, in trust for children, as husband shall appoint;

—in default of appointment, for the children equally.

Usual clauses.

Trust, in default of any children becoming entitled, for the husband absolutely.

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

twenty-one years, or, being a daughter, shall attain that age or marry (*d*), then and in such case the said E. F. and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, shall, from and after the determination of the trust hereinbefore declared for the benefit of the said C. D., and such default or failure of children of the said intended marriage as aforesaid, which shall last happen, stand and be possessed of and interested in all and singular the trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, IN TRUST for the said A. B., his executors, administrators, and assigns: PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, that, until the said messuage, piece, or parcel of land and other hereditaments and premises hereby released, or expressed and intended so to be, shall be so sold as aforesaid, the said E. F. and G. H., their heirs and assigns, shall stand and be seised of the said messuage, piece, or parcel of land, hereditaments and premises, or the unsold part thereof, for the time being, UPON TRUST that the said E. F. and G. H., and the survivor of them, and the heirs of such survivor, do and shall pay and apply the rents, issues, and profits of the same (after payment thereout of all rates, taxes, repairs, and other necessary outgoings) to the person or persons, upon and for the trusts, intents and purposes, and in the manner to, upon, for, and in which the interest, dividends, and annual produce of the money to arise by a sale thereof, or of the stocks, funds, and securities in or upon which the same is hereinbefore directed to be invested would be payable and applicable in case a sale thereof had been made, and the money arising from such sale had been invested as aforesaid: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that in the meantime and until the said messuage, piece or parcel of land and other heredi-

Rents and profits until sale to go as income of the purchase-money.

Power of leasing for twenty-one years.

(*d*) See supra, p. 322, n. (*n*).

taments and premises shall be sold in pursuance of the trust hereinbefore contained, it shall be lawful for the said A. B. and C. D., as and when and by virtue of the trusts hereinbefore contained, they shall successively and respectively be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises, or of the unsold part thereof for the time being, during the continuance of either of the same trusts, and also to and for the said E. F. and G. H. and the survivors of them, and the executors or administrators of such survivor, from time to time and at all times after the determination of the aforesaid trusts for the benefit of the said A. B. and C. D., and in the meantime and until the said premises shall be sold, by any indenture or indentures, to be by him, her, or them sealed and delivered in the presence of two or more credible witnesses, to limit or appoint, by way of demise or lease, or in case of the said E. F. and G. H. or the survivor of them executing this power, to demise or lease all or any part or parts of the said hereditaments and premises to any person or persons for any term &c. [*usual power of leasing for twenty-one years, supra, p.* 351.—*Trustees' receipt clause, supra, p.* 352.—*Clauses for the appointment of new trustees and the indemnity and reimbursement of trustees, supra, pp.* 324, 328]. IN WITNESS &c.

PURCHASE-MONEY OF REAL ESTATE CONVEYED IN TRUST FOR SALE BY SAME DEED.

Trustee clauses.

X.

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

SETTLEMENT *of* PERSONALTY (*subject to the Life Interests of the Husband and Wife*), IN TRUST *for all the* CHILDREN EXCEPT *the* ELDEST *or* ONLY SON, *or the* ELDEST DAUGHTER, *becoming entitled to settled real Estate* (*a*). SURVIVORSHIP CLAUSE. DISPOSITION, *if only One Child of the Marriage, in favour of such* ONE CHILD. TRUST *for Payment of an* ANNUITY *by way of* PIN-MONEY *to the Wife during her Husband's Life.* POWER *to lay out* MONIES *in the* PURCHASE *of* LANDS *to be held as* PERSONAL ESTATE.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; and E. F., of &c.; and G. H., of &c., [*trustees*], of the third part: [*Recital that the wife is entitled to a sum of stock; that the marriage has been agreed upon; that the stock was agreed to be transferred to the trustees on the trusts of this settlement; and that it has been transferred; supra, pp.* 309, 310]. NOW THIS INDENTURE WITNESSETH, that &c.: [*Declaration of trust for the wife till marriage; after marriage to permit the varying of securities, supra, p.* 311]: AND IT IS HEREBY agreed and declared between and by the parties to

Witnesseth, declaration of trusts.

Who are entitled under a gift to younger children.

(*a*) The question who are entitled under a gift to "younger children," and under similar gifts, is discussed at considerable length, 2 Powell on Devises, by Jarman, pp. 333 *et seq.* Many of the points decided in the cases there referred to cannot arise on formal trusts in marriage settlements; but questions as to the period at which the children entitled are to be ascertained, and as to the effect of clauses of survivorship and accruer have frequently arisen. (See *Spencer* v. *Spencer*, 8 Sim. 87; *Peacock* v. *Pares*, 2 Kee. 689, and the cases there cited).

these presents, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon trust, that the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, &c., [*during the joint lives of the husband and wife pay an annuity to the wife for her separate use, and the residue of the income to the husband, and pay the whole income to the survivor for life. See supra, pp.* 396, 397]: AND after the death of the survivor of them the said A. B. and C. D., do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every, or such one or more exclusively of the others or other of the children of the said A. B. by the said C. D., (other than an eldest or only son or an eldest daughter for the time being entitled to the first estate in tail in the estates of the said A. B. in the parishes of —— and ——, in the county of ——, under the limitations of an indenture bearing even date herewith, and made or expressed to be made between [*parties*],) with such provision for their respective maintenance and education &c., [*as the husband and wife, or the survivor, shall appoint, supra, p.* 317]: AND IN DEFAULT of any such direction or appointment as aforesaid, and so far as no such direction or appointment shall extend, do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same, (that is to say) (*b*), IF THERE SHALL BE

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

After the death of the survivor the funds to be in trust for the children, except an eldest or only son, or an eldest daughter for the time being entitled to settled real estate, as the husband and wife or the survivor appoint.

Trusts in default of appointment;

—if one such

(*b*) The following trusts in default of appointment are used instead of the simpler form, (supra, p. 318), whenever the child who shall become entitled to the real estate is to be excluded. Formerly, indeed, these trusts, with the clause of survivorship and accruer, were employed on all

Ancient trusts and clause of survivorship and accruer to be employed

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

but one child of the said A. B. by the said C. D., (other than or besides an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), In trust for that one child, to be an interest vested in such child, being a son, at his age of twenty-one years, or, being a daughter, at the age of twenty-one years or day of marriage, (which shall first happen), and to be paid, transferred, or assigned to him or her on or at the same age, day, or time, if the same shall happen after the decease of the survivor of them the said A. B. and C. D., but if the same shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such survivor; AND IF THERE SHALL BE two or more children of the said A. B. by the said C. D., (other than an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), then in trust for such two or more children, and to be divided between or amongst them in equal shares, the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, (which shall first happen), and to be paid, transferred, or assigned to him, her, or them respectively, at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the survivor of them the said A. B. and C. D., but if the same respectively shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such sur-

child, for that child;

—if more such children, for them equally.

when the child taking the real estate is to be excluded.

occasions, and it is only in quite modern times that the clear and compact trust now in use, (supra, p. 318), and which attains precisely the same object as the old trusts and clause, has been introduced. It might be possible (perhaps without much difficulty) to adapt the modern trust to the case in which the child who shall become entitled to the real estate is excluded; but as the editor is not aware of such an adaptation having been made in practice, he has not deemed it right to make the experiment. (See the note on the survivorship clause in the next page).

vivor: [*Hotchpot clause, supra, p.* 319]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall be more than one child for whom portions are intended to be hereby provided as aforesaid, and any of them, being a son or sons, shall die or become an eldest or only son so for the time being entitled as aforesaid, under the age of twenty-one years, or, being a daughter or daughters, shall die or become an eldest daughter so for the time being entitled as aforesaid, under the age of twenty-one years, without being or having been married, then (in case no direction or appointment shall be made by the said A. B. and C. D. or the survivor of them to the contrary) as well the original share intended to be hereby provided for as the share or shares by virtue of this present clause or proviso surviving or accruing to each such son so dying or becoming an eldest or only son so for the time being entitled as aforesaid, and each such daughter so dying or becoming an eldest daughter so for the time being entitled as aforesaid, or so much thereof as shall not have been raised or applied for the preferment and advancement in the world of any such child, in pursuance of the power or authority hereinafter for that purpose contained, shall, from time to time go, remain, and belong to the survivors or survivor and others or other of such children, (other than or besides an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), and, so far as circumstances will admit, shall vest in and be paid, transferred, or assigned to him, her, or them, if more than one, in equal shares and proportions, at such and the same time or times and in such and the same manner as hereinbefore is declared of and concerning his, her, or their original share and shares of and in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof(*c*): AND IT IS HEREBY agreed and declared be-

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

Survivorship and accruer clause.

The eldest or

(*c*) As the original shares given by this form are *to vest* in sons at twenty-one, and in daughters at that age or marriage, it might be contended that the survivorship and accruer clause, so far as it relates to the shares of sons dying under twenty-one, and of daughters dying under

Clause of survivorship and accruer—use and operation of.

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

only son or eldest daughter to become entitled in default of other children entitled.

Usual clauses.

Power to the trustees to lay out the trust monies in the

tween and by the parties to these presents, that in case there shall be only one child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then from and after the death of the survivor of them the said A. B. and C. D., and such default or failure of other children of the said intended marriage as last aforesaid, the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained in trust for such one child. [*Advancement, maintenance, and accumulation clauses, supra, pp.* 319—321. *Trust over in case of no child of the marriage becoming entitled under the preceding trusts, supra, p.* 321]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H.

---

twenty-one or marriage, is superfluous. This would be to maintain, that the effect of the original trusts is exactly the same as that of the modern form, (supra, p. 318), viz. to divide the fund into as many shares as there are sons attaining twenty-one, and daughters attaining that age or marrying, and to vest the several shares in such sons and daughters respectively. Such, however, is not the construction of the trusts according to the understanding and practice of conveyancers, evinced by their addition of the clause of survivorship and accruer; for they hold that the effect of the original trusts is to divide the fund into as many shares as there are children *born*, and to vest so many of these shares, and no more, as there are sons who attain twenty-one, and daughters who attain that age or marry; consequently, all the shares set apart as it were at birth for sons who do not attain twenty-one, and for daughters who do not attain twenty-one or marry, remain undisposed of by the original trusts. Hence of these there would be a resulting trust. To provide against this, the clause of survivorship and accruer is added, which redistributes according to the original trusts the shares which fail to become vested under those trusts. The reference to the shares of children becoming entitled to the real estate will, of course, be omitted when unnecessary; but it must be repeated that this mode of disposition is so cumbersome and complicated, that (except in the case in the text) it has, at the present day, been abandoned for the form supra, p. 318. (See too supra, p. 435, n. (*b*)).

and the survivor of them, and the executors or administrators of such survivor, at any time or times during the lives of the said A. B. and C. D., and the life of the survivor of them, with their, his, or her consent in writing, to lay out and invest [the money to arise or be produced from the sale, transfer, or disposition of the said sum of £—— Bank Annuities, or any part thereof, or from the sale, transfer, or disposition of any stocks, funds, or securities in or upon which the same trust monies, or any of them, or any part thereof, shall for the time being be laid out or invested] (*d*), or any part of such trust monies respectively, in the purchase of any freehold, copyhold, or customary manors, messuages, lands, tenements, or hereditaments in England or Wales, for any estate of inheritance (*e*), or any leasehold messuages, lands, tenements, or hereditaments in England or Wales, for any term of years, (whereof not less than sixty years shall be to come and unexpired at the time of such purchase), to be conveyed, surrendered, or assigned to them the said E. F. and G. H., or the survivor of them, and their or his heirs, executors, administrators, and assigns, according to the nature of the estate or interest therein (*f*),

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

purchase of lands;

(*d*) If the fund settled be a sum of money, due on mortgage, bond, covenant, or other security, instead of the words in brackets, say—

Variations when settled fund is money instead of stock.

"the said sum of £——, or any part thereof, or the money to arise or be produced by the sale, transfer, or disposition of the stocks, funds, or securities in or upon which the said sum of £——, or any part thereof, shall or may for the time being be laid out or invested."

(*e*) It may be proper, perhaps, to add—

Power to purchase lifehold property.

"or any freehold, copyhold, or customary manors, messuages, lands, tenements, or hereditaments in England or Wales, holden for any life or lives or for any term or terms of years determinable with any life or lives."

But this might produce difficulties about the renewal of the leases on the dropping of the lives, (see supra, p. 347, n. (*f*), p. 350, n. (*g*)), and the power is seldom so extended in practice. Neither does it embrace renewable ecclesiastical leases, probably for a similar reason.

(*f*) When this power of purchasing land is given, a few words are

Trustees do not

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

—to be held in trust for sale;

UPON TRUST, nevertheless, that the said E. F. and G. H., or the survivor of them, or the heirs, executors, or administrators of such survivor, do and shall, by and with the consent in writing of the said A. B. and C. D. or of the survivor of them, during the lifetime of them or of the survivor of them, and after the decease of the survivor of them, at the discretion and of the proper authority of the said E. F. and G. H., or the survivor of them, or the heirs, executors, or administrators of such survivor, absolutely sell and dispose of the said manors, messuages, lands, tenements, or hereditaments which shall have been so purchased as aforesaid, either entirely and altogether or in parcels, and either by public auction or private contract, for such price or prices, and upon such conditions and with such stipulations as to title or otherwise, and in such manner in every respect, as the said E. F. and G. H. or the survivor of them, or the heirs, executors, or administrators of such survivor, shall think fit, with full power to buy in the said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to resell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively; AND DO AND SHALL stand possessed of and interested in, and apply the money arising from any such sale, (after payment of the costs, charges, and expenses attending the same), upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such

—the purchase-money to be held upon the same trusts as that laid out in the purchase;

need indemnity in respect of purchases with a defective title.

sometimes added in the trustees' indemnity clause, to exonerate them from liability in respect of purchasing with a defective title, or the like. But this is by no means needful: the addition is not made after the common power of sale and exchange and purchase in settlements of real estate, and there can be no doubt that trustees, exercising common discretion in their purchases under a power, would be protected by the court, though they had no special indemnity; and if they had such an indemnity, it would not help them if they should purchase without exercising that discretion which a prudent man would use in his own affairs. (See *supra*, p. 327, n. (*v*)). Trustees cannot purchase subject to special conditions of sale, (ante, Vol. 3, p. 97), and it is not desirable that they should be invested with such power, or indemnified in respect of purchases so made.

and the same powers, provisoes, agreements, and declarations, (including the said power of purchasing freehold, copyhold, and leasehold hereditaments), as the money so raised and laid out in the purchase of such manors, messuages, lands, tenements, or hereditaments, was subject to before such purchase was made, or would then have been subject to if the same had not been laid out therein; AND DO AND SHALL, in the meantime and until such manors, messuages, lands, tenements, or hereditaments shall be so sold, pay and apply the rents, issues, and profits thereof to the persons, for the intents and purposes, and in the manner, to, for, and in which the interest, dividends, and annual produce of the money laid out in the purchase thereof would have been payable and applicable under the trusts hereinbefore declared in case such purchase had not been made; IT BEING HEREBY agreed and declared that the manors, messuages, lands, tenements, and hereditaments which shall be purchased under this present power shall, when so purchased, be considered as money, and be subject to such and the same trusts in all respects as the money laid out in the purchase thereof was subject to before such purchase was made, or would have been subject to if the same had not been so laid out; AND THAT it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, in the meantime, until the same manors, messuages, lands, tenements, and hereditaments shall be so sold as aforesaid, with such consent or at such discretion as aforesaid, to lease the same or any part or parts thereof at rack rent, for any term or terms of years, not exceeding twenty-one years, to take effect in possession and under the usual covenants and conditions on the part of the lessees: [*Trustees' receipt clause, supra, p. 352.—Power to appoint new trustees, supra, p. 324.—Clauses for the indemnity and reimbursement of trustees, supra, pp. 326, 327*]. IN WITNESS &c.

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

—and the rents and profits till sale to be applied as the income of the trust monies;

—the land being to be held as personal estate;

—and with power of leasing.

Trustee clauses.

XI.

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

COVENANT *on a Marriage to* SURRENDER *an Undivided Moiety, in* REVERSION *expectant on a Life Estate, of* COPYHOLDS, *and also* COPYHOLDS *in possession,* TO THE USE *of* TRUSTEES *for Sale.* TRUSTS *of the Purchase-Money (subject to a Provision for the Life Estate) declared by* REFERENCE *to the* MARRIAGE SETTLEMENT *of even Date (a).* POWERS *of* PARTITION *and of* LEASING *for Twenty-one Years.* COVENANTS *for* TITLE.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part; [*Recital of a purchase by the father and testator of A. B. of a moiety expectant on the death of X. Y. (a tenant for life) of certain copyholds; of his will; and of certain releases whereby the same became vested in A. B.;—also of a purchase by A. B. of certain other copyholds in possession holden of the same manor, and of his admittance*]; AND WHEREAS a marriage has been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was among other things agreed, that the said copyhold premises purchased of the said X. Y., subject to her life-interest therein, and the said copyhold hereditaments purchased of the said ——, should be surrendered to the use of the said E. F. and G. H. and their heirs, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations here-

Recitals shewing the husband's estate in the copyholds;

—of the agreement to vest the copyholds in trustees for sale.

(a) See supra, p. 333, n. (a), p. 341, n. (a).

inafter declared and contained of and concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H. and their heirs, that he the said A. B. or his heirs shall and will, at the court to be holden next after the solemnization of the said intended marriage, in and for the said manor of ——, at his or their own costs and charges, well and effectually surrender or cause to be surrendered by all necessary parties into the hands of the lord or lady, lords or ladies, of the said manor, according to the custom of the same manor, ALL THAT the said equal moiety or half part lands and hereditaments comprised in the said surrender of the —— day of ——, (but subject and without prejudice to the said life estate of the said X. Y.), and also the said tract, piece or parcel of land, and other hereditaments comprised in the said surrender of the —— day of ——(*b*), [*general words*], TO THE USE of the said E. F. and G. H., their heirs and assigns, according to the custom of the said manor, and to be holden by and under the rents, fines, suits, and services therefore due and of right accustomed, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter declared and contained of or concerning the same, (that is to say), [*upon trust for sale, supra, p. 346, substituting* "heirs" *for* "executors or administrators"]: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H. or the survivor of them, or the executors or administrators of such survivor, to sell the said moiety, hereditaments, and premises so purchased of the said X. Y. as aforesaid, in pursuance of the trust for sale hereinbefore contained, either in the lifetime of the said X. Y., or after her death, and in case of a sale

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

Witnesseth, covenant to surrender.

The copyholds.

To the use of the trustees for sale.

Power to sell the reversion in the lifetime of the tenant for life with or without her concurrence.

(*b*) The parcels are correctly placed in the recitals, as the settlor only undertakes to settle the property which he took under the surrenders referred to. (See ante, Vol. 3, p. 312, n. (*b*)).

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

in the lifetime of the said X. Y., either by way of sale in possession with her consent and concurrence, or by way of sale of the reversion expectant on the death of the said X. Y. without her consent or concurrence (*c*): AND IT IS HEREBY agreed and declared between and by the parties to these presents, that in case the said copyhold hereditament purchased of the said X. Y. shall be sold in her lifetime with her consent and concurrence, the said E. F. and G. H., or the survivor of them, or the heirs of such survivor, do and shall lay out and invest the clear money to arise by such sale, (after paying thereout all the costs and expenses of such sale), in the names or name of them the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds, or upon government or real securities in England or Wales, but not in Ireland; AND do and shall, during the life of the said X. Y., with the consent of the said X. Y., A. B., and C. D., or of the survivors or survivor of them, alter, vary, and transpose the said trust monies, stocks, funds, and securities into or for other stocks or funds or securities of the like nature, as to the said trustees or trustee shall seem meet; AND do and shall during the life of the said X. Y. pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to her the said X. Y. and her assigns for her and their own use:

Trusts of the purchase-money during the life of the tenant for life if a sale be made with her concurrence.

Trusts for sale of a reversionary estate.

(*c*) When a reversionary estate is made the subject of a settlement containing either a power or trust for sale, the settlement should never fail to declare whether a sale may or may not be made before the reversion falls into possession, and to provide for the destination of the purchase-money, in case of a sale being made during the continuance of the prior estate, and with the concurrence of the owner thereof. In a late case of this nature, in which a purchaser objected that the power of sale could not be exercised till the reversion fell into possession, *but waived all other objections*, and the court was of opinion that the power was well exercised; it was referred to the Master to make an apportionment of the purchase-money between the owner of the prior estate and the trustees of the settlement. (*Clark* v. *Seymour*, 7 Sim. 67). But it does not appear that an apportionment would have been forced on the purchaser if he had not waived all objections except that to the exercise of the power of sale.

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F. and G. H., their heirs, executors, administrators, and assigns, shall stand and be possessed of and interested in the sum or sums of money to arise or be produced by any sale which shall be made in pursuance of these presents, including the stocks, funds, or securities in or upon which the money to arise by the sale of the said copyhold hereditaments purchased of the said X. Y. shall be invested, in case the same premises be sold in her lifetime with her concurrence as aforesaid, but subject and without prejudice to her life interest in the interest, dividends, and annual produce thereof under the trusts hereinbefore declared, and also of and in the rents, issues, and profits of the said copyhold hereditaments hereinbefore covenanted to be surrendered, or expressed and intended so to be, until the same shall be sold, UPON and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations declared, expressed, and contained of and concerning the same in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between [*parties—settlement*]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of them, and the heirs of such survivor, at any time or times hereafter, before the lands and hereditaments whereof an equal moiety or half part is hereinbefore covenanted to be surrendered shall be sold in execution of the trust hereinbefore declared, (with the consent in writing of the said X. Y., A. B., and C. D., and of the survivors and survivor of them, during their, his, and her lives and life respectively, and after the death of the survivor of them, at the discretion of them the said E. F. and G. H., or of the survivor of them, or of the heirs of such survivor), to join and concur with the person or persons for the time being seised of or entitled to the other part or share of the same copyhold hereditaments, in making a partition or division of the same copyhold hereditaments, or any of them, or any part or

General trusts of the purchase-money.

Power of partition.

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

parts thereof, And that, for the purpose of effecting any such partition or division as aforesaid, it shall be lawful for the said E. F. and G. H., and the survivor of them, and the heirs of such survivor, with such consent or at such discretion as aforesaid, to enter into, make, do, and execute all such contracts, agreements, covenants, conveyances, surrenders, assurances, acts, deeds, matters, and things as to them or him shall seem reasonable or proper; And also, that after any such partition or division as aforesaid, the hereditaments which shall be received in lieu of or as a specific allotment for the undivided equal moiety or half part hereby covenanted to be surrendered, or any of them, or any part thereof, shall be surrendered to the use of the said E. F. and G. H., their heirs and assigns, and shall be held by them upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations (except the power of partition) in and by these presents expressed and declared or contained of and concerning the said hereditaments and premises hereby covenanted to be surrendered, or as near thereto as the deaths of parties and other intervening accidents will admit of: [*Power until sale of leasing for twenty-one years, "but with the consent and concurrence of the said X. Y. during her life as aforesaid," see supra, p.* 351]: AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their heirs and assigns, in manner following, (that is to say), THAT, for and notwithstanding any act, deed, matter, or thing whatsoever by him the said A. B. or the said ——, the testator, made, done, committed, or executed, or knowingly or willingly suffered, to the contrary, he the said A. B., at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to, the said hereditaments and premises hereinbefore covenanted to be surrendered, and every part thereof, for a good, sure, perfect, absolute, and indefeasible estate of inheritance, according to the custom of the said manor, and by and under the rents, fines, hereditaments, suits, and services therefore due and of right ac-

Power of leasing for twenty-one years. Covenants by the husband;

—for seisin subject to the life estate in part;

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

customed, without any manner of condition, use, trust, property, power of revocation, equity of redemption, or any limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same, other than and except the life estate of the said X. Y. in the said moiety, hereditaments, and premises purchased of her as aforesaid; AND THAT, for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said A. B. now hath in himself good right, full power, and lawful and absolute authority to surrender the said hereditaments and premises hereinbefore covenanted to be surrendered, (subject only as to the lands purchased of the said X. Y. to the life estate of the said X. Y.), To the use of the said E. F. and G. H., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore declared, expressed, and contained of and concerning the same respectively, according to the true intent and meaning of these presents; AND THAT all and singular the said hereditaments and premises shall and may, from time to time and at all times after the said intended marriage, go, remain, and be to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore expressed and declared or referred to, of and concerning the same respectively, and shall and may peaceably and quietly be held and enjoyed accordingly, without any let, suit, trouble, denial, eviction, ejection, disturbance, interruption, claim, or demand whatsoever of or by him the said A. B., or his heirs, executors, or administrators, or any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him or them, or any of them, or by, from, or under the said ——, the testator, but subject as aforesaid; AND THAT free and clear, and freely and clearly acquitted, exonerated, released, and for ever discharged, or otherwise by him the said A. B., or his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from,

—for right to surrender subject to the life estate in part;

—for quiet enjoyment, subject as aforesaid;

—free from incumbrances except the life estate;

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

but one child of the said A. B. by the said C. D., (other than or besides an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), In trust for that one child, to be an interest vested in such child, being a son, at his age of twenty-one years, or, being a daughter, at the age of twenty-one years or day of marriage, (which shall first happen), and to be paid, transferred, or assigned to him or her on or at the same age, day, or time, if the same shall happen after the decease of the survivor of them the said A. B. and C. D., but if the same shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such survivor; AND IF THERE SHALL BE two or more children of the said A. B. by the said C. D., (other than an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), then in trust for such two or more children, and to be divided between or amongst them in equal shares, the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, (which shall first happen), and to be paid, transferred, or assigned to him, her, or them respectively, at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the survivor of them the said A. B. and C. D., but if the same respectively shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such sur-

child, for that child;

—if more such children, for them equally.

when the child taking the real estate is to be excluded.

occasions, and it is only in quite modern times that the clear and compact trust now in use, (supra, p. 318), and which attains precisely the same object as the old trusts and clause, has been introduced. It might be possible (perhaps without much difficulty) to adapt the modern trust to the case in which the child who shall become entitled to the real estate is excluded; but as the editor is not aware of such an adaptation having been made in practice, he has not deemed it right to make the experiment. (See the note on the survivorship clause in the next page).

vivor: [*Hotchpot clause, supra, p.* 319]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall be more than one child for whom portions are intended to be hereby provided as aforesaid, and any of them, being a son or sons, shall die or become an eldest or only son so for the time being entitled as aforesaid, under the age of twenty-one years, or, being a daughter or daughters, shall die or become an eldest daughter so for the time being entitled as aforesaid, under the age of twenty-one years, without being or having been married, then (in case no direction or appointment shall be made by the said A. B. and C. D. or the survivor of them to the contrary) as well the original share intended to be hereby provided for as the share or shares by virtue of this present clause or proviso surviving or accruing to each such son so dying or becoming an eldest or only son so for the time being entitled as aforesaid, and each such daughter so dying or becoming an eldest daughter so for the time being entitled as aforesaid, or so much thereof as shall not have been raised or applied for the preferment and advancement in the world of any such child, in pursuance of the power or authority hereinafter for that purpose contained, shall, from time to time go, remain, and belong to the survivors or survivor and others or other of such children, (other than or besides an eldest or only son or an eldest daughter so for the time being entitled as aforesaid), and, so far as circumstances will admit, shall vest in and be paid, transferred, or assigned to him, her, or them, if more than one, in equal shares and proportions, at such and the same time or times and in such and the same manner as hereinbefore is declared of and concerning his, her, or their original share and shares of and in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof(*c*): AND IT IS HEREBY agreed and declared be-

IN EXCLUSION OF AN ELDEST OR ONLY SON OR ELDEST DAUGHTER ENTITLED TO SETTLED REAL ESTATE.

Survivorship and accruer clause.

The eldest or

(*c*) As the original shares given by this form are *to vest* in sons at twenty-one, and in daughters at that age or marriage, it might be contended that the survivorship and accruer clause, so far as it relates to the shares of sons dying under twenty-one, and of daughters dying under

Clause of survivorship and accruer—use and operation of.

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

and against all and all manner of former and other estates, titles, troubles, charges, and incumbrances whatsoever, either already had, made, committed, done, executed, occasioned, or suffered, (except the life estate of the said X. Y.), or hereafter to be had, made, committed, done, executed, occasioned, or suffered, by him the said A. B. or his heirs, or any other person or persons lawfully claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under the said ——, the testator; AND FURTHER, that the said A. B. and his heirs, and all and every other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, interest, property, claim, and demand whatsoever, either at law or in equity, of, in, to, or out of the said hereditaments and premises hereby covenanted to be surrendered, or any of them, or any part thereof, by, from, under, or in trust for him or them, or any of them, or by, from, or under the said ——, the testator, shall and will, from time to time and at all times hereafter, at the request of the said E. F. and G. H., or the survivor of them, or the heirs of such survivor, or any person for the time being interested in the premises, but at the proper costs and charges of him the said A. B., his heirs or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely conveying, surrendering, and assuring of the said hereditaments and premises hereinbefore covenanted to be surrendered, and every of them, and every part and parcel thereof, with their and every of their appurtenances, (subject and without prejudice to the life estate of the said X. Y. in the moiety aforesaid), TO THE USE of the said E. F. and G. H., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore declared and expressed, or referred to, of and concerning the same respectively, according to the true intent and meaning

—and for further assurance.

of these presents, as by the said E. F. and G. H., or the survivor of them, or the heirs of such survivor, or any person for the time being interested in the premises, their or any of their counsel in the law, shall be reasonably devised or advised and required: [*Power to the trustees to give receipts, supra, p. 352.—Power of appointing new trustees, supra, p.* 324]. IN WITNESS &c.

COVENANT TO SURRENDER COPYHOLDS IN TRUST FOR SALE.

Trustee clauses.

XII.

SETTLEMENT *on Marriage, of an* ADVOWSON, *upon Trust to* PRESENT *the intended* HUSBAND *on the first Vacancy; and then, or before, if he consent, or upon his previous Death, to* SELL, *and hold the Purchase Money upon ordinary Trusts.* COVENANT *by the intended* HUSBAND, *in certain Events, to* ASSURE *his* LIFE.

OF AN ADVOWSON.

THIS INDENTURE, made &c., BETWEEN M. B., of &c., [*the father of the said intended husband*], of the first part; A. B., of &c., [*intended husband*], of the second part; C. D., of &c., spinster, [*intended wife*], of the third part; and E. F., of &c., and G. H., of &c., [*trustees*], of the fourth part: WHEREAS, by an indenture bearing date the —— day of ——, and made or expressed to be made between [*parties*], ALL THAT the advowson or perpetual alternate right of patronage and presentation, together with the Right Reverend the Lord Bishop of —— for the time being, of and to the consolidated and united mediety of the rectory and parish church of —— in the county of ——, and of which ——, clerk, was then rector and incumbent, (save and except the right of presentation for the then next turn only thereto, which had been then lately sold to ——), with the rights, members, and appurtenances, were conveyed and assured To the use of the said M. B., his

Parties.

Recital of the conveyance of the alternate right of presentation, (except the next turn), of a rectory, to the husband's father;

OF AN ADVOWSON.

heirs and assigns for ever; AND WHEREAS, since the date and execution of the said indenture, the said excepted turn and right of presentation was exercised by the said ——, by the presentation of —— to the said living, who was thereupon inducted; And upon his decease, in or about the year ——, the said Lord Bishop of ——, in whom the next alternate right of presentation was then vested, presented —— to the said living, who was thereupon inducted, and is now the incumbent thereof, and the next turn belongs to the said M. B. (*a*); AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said advowson or perpetual alternate right of patronage and presentation should be conveyed by the said M. B. to the use of the said E. F. and G. H., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same; AND WHEREAS upon the said treaty it was also agreed that the said A. B. should enter into such covenants for effecting and keeping up an assurance on his life as are hereinafter contained, And that these presents should contain such provisoes, agreements, and declarations in respect of the said assurance as are hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreements, and in consideration of the said intended marriage, he the said M. B. hath granted and confirmed, and by these presents doth grant and confirm, unto the said E. F. and G. H. and their heirs, ALL THAT the advowson or perpetual alternate right of patronage and presentation belonging to the said M. B. as afore-

—of the excepted next turn, and the alternate presentation having been exercised;

—of the agreement for the marriage;

—of the agreement to settle the advowson;

—and that the husband should enter into covenants for keeping his life assured.

Witnesseth, conveyance;

—of the advowson.

(*a*) It would have been sufficient to have recited that M. B. was seised or entitled in fee to the alternate right of presentation, together with the bishop, and that the actual incumbent had been presented by the bishop, so that the next turn belongs to M. B.

OF AN ADVOWSON.

said, of and to the said consolidated united medieties of the said rectory and parish church of —— aforesaid (*b*), AND the reversion, &c., AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD the said advowson or perpetual and alternate right of patronage and presentation, and all and singular other the premises hereby granted, or expressed and intended so to be, unto the said E. F. and G. H., and their heirs, TO THE USE of the said M. B. and his heirs, until the solemnization of the said intended marriage; AND from and after the solemnization thereof, TO THE USE of the said E. F. and G. H., and their heirs and assigns, UPON TRUST that on the next avoidance of the said church in the lifetime of the said A. B., they the said E. F. and G. H., or the survivor of them, or the heirs of such survivor, do and shall present the said A. B. thereto, AND UPON FURTHER TRUST that from and immediately after the decease of the said A. B., or from and immediately after he shall be presented to the said church, whichever shall first happen, or during the life of the said A. B., and before he shall be so presented, in case he shall consent thereto in writing, they the said E. F. and G. H., or the survivor of them, or the heirs of such survivor, do and shall absolutely sell and dispose of the said advowson or alternate right of presentation, either by public auction &c., [*supra, p. 346, omitting the words referring to a sale in parts*]; AND do and shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, lay out and invest the money to arise from such sale in the names or name of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England

Habendum.

To use of grantor till marriage;

—and after, to the use of the trustees.

Upon trust on the next vacancy in the husband's lifetime, to present him;

—and after such presentation or on his previous death, or with his consent, to sell;

—and lay out and invest the purchase-monies.

(*b*) With respect to conveyances of advowsons, see ante, Vol. 3, Precedent XXIX, p. 295, n. (*a*), p. 296, notes (*b*) and (*c*).

OF AN ADVOWSON.

or Wales, (but not in Ireland (*c*)), with power for the said E. F. and G. H., with such consent or at such discretion as aforesaid, to alter, vary, and transpose the same stocks, funds, and securities into or for others of the same or a like nature (*d*), the said stocks, funds, and securities, and the interest, dividends, and annual produce thereof, to be holden by them or him upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively: PROVIDED ALWAYS and it is hereby agreed and declared between and by the parties to these presents, that, in case the said advowson and premises shall not have been sold in the lifetime of the said C. D., and the said C. D. shall die in the lifetime of the said A. B., and shall leave no child living at her decease, and shall not have had any child who shall have become entitled to a vested interest under the trusts and powers hereinafter contained of and in the money to arise by the sale of the said advowson and premises, then and in such cases the said advowson and premises hereinbefore granted, or intended so to be, shall not be sold, but the said E. F. and G. H., their heirs and assigns, shall immediately after the death of the said C. D. stand and be seised thereof, In trust for the said M. B., his heirs and assigns: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand, &c., [*trusts of the purchase-money of the advowson for the husband and wife, and the sons attaining twenty-one, and the daughters attaining twenty-one or marrying, with the usual clauses for hotchpot, advancement, maintenance, and accumulation, supra, Precedent I., pp. 313, 321*]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, in case there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then and in such case the said E. F.

Proviso, that in certain events the advowson, if not previously sold, shall revert to the grantor.

Trusts of the purchase-money of the advowson.

In default of children becoming entitled, the monies to belong to the husband's father.

(*c*) See supra, p. 312, n. (*e*). (*d*) See supra, p. 313, n. (*f*).

OF AN ADVOWSON.

and G. H., their executors, administrators, and assigns, shall, from and after the death of the survivor of them the said A. B. and C. D., stand and be possessed of and interested in all and singular the monies to arise and be produced from the sale of the said advowson and right of alternate presentation, and the stocks, funds, and securities upon which the same shall have been invested, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the powers or trusts herein contained, IN TRUST for the said M. B., his executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, that, in case the said intended marriage shall take effect, and the said A. B. shall be presented and inducted to the said rectory and parish church aforesaid, or in case the said advowson and premises shall be sold in the lifetime of the said A. B. before he shall have been presented and inducted as aforesaid, or in case the said A. B. shall become seised or possessed of any other ecclesiastical preferment or real or personal estate producing to him an annual income of not less than £——, then and in such case, and immediately after such presentation and induction, or such sale, or so becoming seised or possessed as aforesaid, whichever of the said events shall first happen, he the said A. B. shall and will, at his own costs and charges, assure or use his best endeavours to assure his life in the names or name of the trustees or trustee for the time being of these presents, in such office of assurance as the said trustees or trustee shall select, in the sum of £—— (*e*), and shall and will, &c.,

Covenant by the husband in certain events, to effect and keep up an assurance on his life.

(*e*) If the trustees are to assure, it seems they must give notice of the policy having been effected, in order to enable them to sustain an action on the covenant not to vitiate the policy. (*Vyse* v. *Wakefield*, 6 Mee. & W. 442).

OF AN ADVOWSON.

Trusts of the monies to become payable under the assurance.

[*covenants for keeping the assurance on foot, see the covenants in nearly similar cases, supra, pp.* 384, 423]: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall receive the money to become payable under or by virtue of such assurance, and do and shall invest the same in their or his names or name in or upon any such stocks, funds, or securities as are hereinbefore mentioned with respect to the said monies to arise by the sale of the said advowson, with power to alter, vary, and transpose the securities as aforesaid; And do and shall stand and be possessed of and interested in the stocks, funds, and securities so to be purchased, and the interest, dividends, and annual produce thereof, UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as are hereinbefore declared, expressed, and contained of and concerning the stocks, funds, and securities to be purchased with the money to arise from the sale of the said advowson, and the interest, dividends, and annual produce thereof, or such of them as shall for the time being be subsisting and capable of taking effect, save and except that the ultimate trust of the said money to be received under or by virtue of the said assurance, and the stocks, funds, or securities in or upon which the same shall be invested, shall be for the said A. B., his executors, administrators, and assigns (*f*): [*Power to the trustees to keep up the assurance out of the income or capital of the trust funds, (if any), and exoneration for the omission to do so, supra, pp.* 386, 425.—*Trustees' receipt clause, supra, p.* 352.—*Power to appoint new trustees, supra, p.* 324.—*Clauses for the indemnity and payment of trustees, supra, pp.* 326, 327]. IN WITNESS &c. (*g*).

(*f*) See supra, p. 382, n. (*p*).

(*g*) It would have been better, perhaps, to have declared the trusts for sale of the advowson by one deed, and those of the purchase and assurance monies by another. (See supra, p. 333, n. (*a*)).

XIII.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

ARTICLES *on the* MARRIAGE *of a* FEMALE INFANT(*a*), *of her Share in* MONIES *to arise from the* SALE *of a* WEST INDIAN *Estate devised in Trust for Sale, and of* MONIES *secured by the Husband's* COVENANT. *The* FIRST LIFE ESTATE *is given to the* HUSBAND, *subject to* DETERMINATION *on his* BANKRUPTCY, &c. PROVISO *that the Money may* REMAIN *on the Security of the* COVENANT, *so long as the Husband keep his* LIFE *adequately assured.* AGREEMENTS *relating to the* SALE *of the* SHARE *of the* WEST INDIAN *Estate, and its* MANAGEMENT, *until a Sale, including a* POWER *to take the* PURCHASE MONEY *by* INSTALMENTS.

THIS INDENTURE, made &c., BETWEEN A. B. of &c., [*intended husband*], of the first part; C. D., of &c., Parties.

(*a*) When the parties are not in a situation to make a conveyance or assignment of the property intended to be settled, so as to vest it in the trustees, the instrument of settlement is generally termed the "Articles for a settlement." This distinction, however, is, for the most part, nominal when applied to personal estate. For a settlement of the personal estate of an infant, or other person who cannot assign, differs or should differ from an ordinary settlement in no other respect than in substituting an agreement to assign for an actual assignment; the trusts and powers should be the same. It is very seldom necessary, now that a deed to bar an entail can be executed at any time, to execute articles of real estate; but when such an instrument is required, the powers should be set out at length, precisely as in a settlement, and the uses and trusts should be formally declared as in a settlement, with the difference, that the shorter language of wills may be employed for this purpose, because articles are construed according to the same rules as wills.

Occasion and object of articles instead of a settlement on marriage.

The personal estate of a female infant is bound by a settlement made on her marriage, because such personal estate becomes by the marriage the absolute property of the husband, and the settlement is in effect his

The personal estate of a female infant bound by her

ARTICLES ON MARRIAGE OF FEMALE INFANT.

[*intended wife*], spinster, an infant of the age of —— years, or thereabouts, of the second part; and E. F., of &c., and

intended husband's settlement on her marriage;

settlement and not hers. (See 2 Russ. & My. 376). And though the reason ceases, the rule is apparently the same with the chattels real of the wife, even although the wife survive the husband; (*Trollope* v. *Linton*, 1 Sim. & Stu. 476); and with the choses in action of the wife, although they be not reduced into possession during coverture, and the wife survive. (*Harvy* v. *Ashley*, 3 Atk. 607. See, too, 1 Sim. & Stu. 485). Of course the rule holds, if there be a reduction into possession during coverture; (*Williams* v. *Williams*, 1 Bro. C. C. 152); but, as Lord *Thurlow* observes, 1 Bro. C. C. 111, it is a very difficult thing to distinguish between such a settlement binding personal property, which never can become that of the husband, and real property, which it confessedly does not bind. And it is decided that property, which before marriage stands settled to the separate use of a female infant, is not bound by a settlement made on her marriage, because the property does not on marriage become the property of the husband. (*Simson* v. *Jones*, 2 Russ. & My. 365; *Johnson* v. *Johnson*, 1 Keen, 648).

—unless it stand settled to her separate use.

But the settlement of the real estate of a female infant is not binding on her;

It is well established that a settlement, or an agreement for a settlement, made on the marriage of a female infant, of her real estate is not binding on her; and if she die without having confirmed the settlement, the property will go to her heir, subject to the husband's common law estate by the curtesy. (*May* v. *Hook*, 1 Bro. C. C. 112, n.; *S. C.* Harg. & But. Co. Lit. 246. a., n. (1); *Clough* v. *Clough*, 3 Wooddeson, 453, n.; *Milner* v. *Lord Harewood*, 18 Ves. 259). But she cannot, after attaining majority, join with her husband during his life in setting the settlement aside, and any conveyance made by them will enure to confirm the settlement. (*Durnford* v. *Lane*, 1 Bro. C. C. 106). It was formerly thought that the concurrence of the parent or guardian of the infant would give force to a settlement, which would not have been binding without such concurrence. (See the observations on this point in *Harvy* v. *Ashley*, 3 Atk. 607; *Ainslie* v. *Medlycott*, 9 Ves. 19; *Stamper* v. *Barker*, 5 Madd. 157). But it is now clear that such concurrence is of no avail. (*Simson* v. *Jones*, 2 Russ. & My. 365).

—even though her parent or guardian join in the settlement.

How far a settlement on the marriage of a male infant is binding on him.

If a male infant marry an adult female, who covenants that her estate shall be settled to certain uses, he is bound by her covenant. (*Slocombe* v. *Glubb*, 2 Bro. C. C. 545). But it is apprehended that a male infant has no power to settle his own property on a marriage. (4 Bro. C. C. 510. See, however, *Strickland* v. *Croker*, 2 Cha. Ca. 211; *Warburton* v. *Lytton*, 4 Bro. C. C. 441).

A female infant barred of her dower by jointure.

A female infant might, even before the Dower Act, 3 & 4 Will. 4, c. 105, have been barred of her dower by a proper legal jointure, settled on her before marriage; (*Earl of Buckinghamshire* v. *Drury*, 2 Eden, 60; *S. C.* 3 Bro. P. C. 492; but not by any other provision in the nature of a jointure. (*Caruthers* v. *Caruthers*, 4 Bro. C. C. 500; *Smith* v. *Smith*, 5 Ves. 189; *Corbet* v. *Corbet*, 1 Sim. & Stu. 612; *S. C.* 5 Russ. 524).

ARTICLES ON MARRIAGE OF FEMALE INFANT.

G. H., of &c., [*trustees*], of the third part: [*Recites the will of B. D., devising a West Indian estate in trust for sale, and directing the proceeds of the sale, and also the rents and profits of the estate till sold, to be divided between his sons and daughters, with survivorship and accruer as to the shares of the sons dying under twenty-one, and daughters dying under that age unmarried.—Of the testator's death without revoking or altering his will, and leaving only three children, of whom C. D. was one*]; AND WHEREAS a marriage hath been agreed upon, and is intended shortly to be had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said A. B. should enter into such covenant as is hereinafter contained for the payment to the said E. F. and G. H., their executors, administrators, and assigns, of the sum of £——, and interest, but subject to the proviso hereinafter contained for allowing the same to remain on the security of the said covenant, and that the said E. F. and G. H., their executors, administrators, and assigns, should stand possessed of and interested in the said sum of £——, and interest, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained of and concerning the same; AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed that the share or shares to which the said C. D., her executors or administrators, or the said A. B. in her right, should, upon the solemnization of the said intended marriage, or at any other time or times thereafter, become entitled under or by virtue of the hereinbefore recited will, of and in the monies to arise by the sale of the said messuage, pieces or parcels of land, plantation, estate, hereditaments, and premises thereby directed to be sold as aforesaid, (after payment thereout of the money due on the said mortgage (*b*), and the other charges, if any, affecting the said premises), should be assigned to and vested in the said E. F. and G. H., their executors, administrators, and assigns,

Recital of a will under which the wife is entitled to a share of monies to arise from sale of a West Indian estate, and of the profits till sale;

—of the agreement, for the marriage;

—of the agreement that the husband should covenant to pay a sum of money to the trustees of the settlement;

—of the agreement to settle the wife's interest under the will.

(*b*) A mortgage mentioned in the will.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed, declared, and contained of and concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, &c. [*Covenant by the husband to pay a sum of money to the trustees within —— months after the marriage, with interest in the meantime until paid; see supra, pp.* 381, 408]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared between and by the parties to these presents (*c*), that, in case the said intended marriage shall take effect, the said A. B. and the said C. D., and all other necessary parties, shall and will, as soon as the case will admit, at the costs and charges of the said A. B., his executors or administrators, by such assignments and assurances in the law as by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, their or his counsel in the law, shall be advised, or devised and required, assign ALL the part or share, parts or shares, to which the said C. D., her executors or administrators, or the said A. B. in her right, shall or may, upon the solemnization of the said intended marriage, or at any time or times thereafter, become entitled, either

Witnesseth covenant by the husband to pay a sum of money to the trustees of the settlement.

Witnesseth further, agreement to assign to the trustees the wife's interest under the will in the monies to arise from a sale, and the rents and profits until sale.

Form of articles immaterial.

(*c*) The form of articles is immaterial in equity, and in equity alone can articles be carried into effect. It is a very common plan in articles on the marriage of female infants, to put the agreement in the shape of covenants by the husband and wife; the covenant by the wife being restricted by the words, "so far as she can or lawfully may." But the wife's covenant is a mere nullity; and it seems better to follow the modern plan of omitting the covenants and framing the agreement generally. For this plan is as effective, and avoids the necessity of inserting a covenant, which appears on the face of the deed to be ineffectual. As to how far the husband's settlement of his infant wife's choses in action will be effectual, if they be not reduced into possession during the coverture, and the wife outlives her husband, see *Harvy* v. *Ashley*, 3 Atk. 707; 1 Sim. & Stu. 485; see, too, supra, p. 455, n. (*a*), and p. 456.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

originally or by survivorship or accruer, under or by virtue of the hereinbefore recited will of the said B. D., of and in the sum or sums of money to arise by the sale of the said messuage and pieces or parcels of land at ——, and the said plantation or estate called ——, and the live and dead stock thereupon, and other the premises by the said will directed to be sold as hereinbefore is mentioned, after payment thereout of the said mortgage debt, and other charges, if any, which shall affect the same premises; And also of and in the proceeds of the crops, rents, issues, and profits of the same estates and premises respectively, in the meantime and until the same respectively shall be so sold, unto the said E. F. and G. H., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same; AND ALSO, in and by the deed or deeds to be executed for making such assignment or assignments or otherwise, authorize and empower the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee thereof for the time being, at any time or times before the said plantations, estates, hereditaments, and premises, by the said will of the said B. D. directed or authorized to be sold as aforesaid, shall be sold accordingly, to sell and dispose of the one-third part or share, or other the part or share, or parts or shares, in or to which the said C. D., her executors or administrators, or the said A. B. in her right, shall or may, or if these presents, or any assignment in pursuance of the agreement in that behalf, hereinbefore in that behalf contained, had not been executed, would or might for the time being be interested in or beneficially entitled under the said will of or in the said plantations or estates, hereditaments, and premises, by the said will authorized or directed to be sold as aforesaid, or the unsold part thereof for the time being, or any of them, or any part thereof respectively, either entirely and altogether or in parcels, and either &c., [*usual powers to trustees for sale, supra, p.* 346]; AND ALSO

—and to empower the trustees to sell the wife's interest in the land separately;

—and to give receipts for;

ARTICLES ON MARRIAGE OF FEMALE INFANT.

with the usual powers to give receipts and discharges to purchasers; AND ALSO with power to accept payment of the purchase money, or any part thereof, by any instalment or instalments, at such time or times, and with such interest in the meantime, as to them or him shall seem meet; such instalment or instalments of principal and interest to be secured upon mortgage of the property sold, or otherwise, as the said trustees or trustee shall think fit; AND with all other powers or authorities usual in that behalf, or which shall be deemed by the said trustees or trustee necessary or expedient for enabling him or them to effectuate such sale or sales, but with a provision, that, during the lives of the said A. B. and C. D., or the life of the survivor of them, no such sale as last aforesaid shall be made without their, his, or her consent and approbation in writing; AND WITH POWER in the meantime for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, to cultivate, manage, maintain stock, and keep up the said plantations or estates respectively, or the unsold part or parts thereof for the time being, and to repair and amend, and insure and keep insured from loss or damage by fire, the erections, buildings, and works upon or belonging to the same respectively, and to erect and build any new or other erections, buildings, or works which may be deemed necessary or useful, and to purchase any cattle, plantation implements or utensils, stores, provisions, or other necessaries for the cultivation or use of the said plantations, or any of them, or any part thereof, and to appoint any manager or managers, receiver or receivers, or other person or persons to act in or about the management and cultivation of the same plantations or estates, or any of them, or any part thereof, and to revoke, alter, and vary such appointment at pleasure; AND to borrow and take up at interest any sum or sums of money which may be wanted for any of the purposes hereinbefore expressed, and which the said trustees or trustee for the time being may think it advisable or expedient to raise and take up at interest, and to execute any mortgage or mortgages of the said premises, or any part thereof, for

—and to accept payment of purchase-money by instalments.

—and with all usual powers;

—and with power until a sale to manage and cultivate the estate, and insure against fire, &c.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

securing payment of the same (*d*), and to appoint any attorney or attornies, substitute or substitutes, with all or any of the powers or authorities so to be vested in them or him respectively, and to revoke, alter, or vary such appointment at pleasure, and generally to act in and about the cultivation and management of the said plantations or estates and premises, or the unsold part or parts thereof for the time being, as if he or they were absolute owners thereof at law and in equity, AND to join and concur with the other person or persons competent in that behalf, with respect to the other part or share, parts or shares, of or in the said plantations or estates, hereditaments and premises, in making, doing, or executing all or any of the acts, matters, or things hereinbefore mentioned or referred to: AND IT IS HEREBY FURTHER AGREED and declared, that in the deed or deeds to be executed for the purposes aforesaid there shall be contained proper clauses, declarations, and agreements for enabling the said E. F. and G. H. and the survivor of them, and the executors or administrators of such survivor, to execute and perform the several trusts to be in them respectively reposed, and for the appointment of new trustees by the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, in the room or stead of any of the trustees dying or being abroad more than twelve calendar months at one time, or refusing, declining,

The deed of assignment to contain all proper and necessary clauses.

(*d*) When power is given to trustees to raise money by mortgage, in certain specified cases, the receipt clause should expressly extend to mortgagees, and should declare it not to be incumbent on them to see that the cases in which money may be raised have happened. Or the following clause may be introduced in the text:—

As to the protection to be given to mortgagees lending money, to trustees with a power to mortgage.

"And to give effectual receipts and discharges for the money advanced by any mortgagee or mortgagees, and to do all such other acts as may be necessary or expedient for the purpose of effectuating any such mortgage or mortgages; and no mortgagee advancing money upon any mortgage purporting to be made under this power, shall be bound to see that such money is wanted, or that no more than is wanted is raised."

ARTICLES ON MARRIAGE OF FEMALE INFANT.

or becoming incapable to act in, or desiring to be discharged from, the trusts reposed in him or them respectively, and for the indemnity of the said trustees, and for authorizing and empowering them to deduct and retain the costs and expenses to be incurred by them in the execution of the trusts so to be reposed in them, and also all such further and other clauses, declarations, powers, provisoes, and agreements, as the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law in that behalf, shall think proper and reasonable, or as are usual in like cases: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said part or share, parts or shares, hereinbefore agreed to be assigned of and in the net monies to arise from the sale or sales, or by the said will directed or authorized to be made as hereinbefore is mentioned, and of and in the net monies to arise from any sale or sales which may be made by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, under the power or authority to be vested in them or him for that purpose, as hereinbefore is mentioned, and of and in the said sum of £——, secured or intended to be secured by the said covenant hereinbefore entered into by the said A. B., upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared of and concerning the same respectively, (that is to say), UPON TRUST, that they the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall receive the said part or share, parts or shares, hereinbefore agreed to be assigned, of and in the net monies to arise from such sale or sales under the said will as aforesaid, and the net monies which may arise from any sale or sales to be made by them or him under the power or authority to be vested in them or him for that purpose, as hereinbefore is mentioned, and also the said sum of £——, secured by the

Trusts of the purchase-monies of the wife's land, and of the monies secured by the husband's covenant;

—for investment and varying securities;

ARTICLES ON MARRIAGE OF FEMALE INFANT.

said covenant when and as the same respectively shall become payable, and do and shall with the consent &c. [*usual power to invest and vary &c., supra, p.* 312]; AND DO AND SHALL from time to time pay the interest, dividends, and annual produce of all and singular the said trust monies, stocks, funds, and securities to, or permit the same to be received by, the said A. B. and his assigns during his life, and until the said A. B. shall be found and declared bankrupt, or be outlawed, or make or enter into any composition with his creditors, or shall accept the benefit of any act of Parliament for the relief of insolvent debtors, or shall assign, charge, or incumber the said interest, dividends, and annual proceeds, or any part thereof (*e*); AND from and after the determination of the trust hereinbefore declared for the benefit of the said A. B., in case the same shall happen during the joint lives of the said A. B. and C. D., do and shall thenceforth, during the joint lives of the said A. B. and C. D., pay and apply the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, [*to the separate use of C. D., without power of anticipation, supra, p.* 315]; AND FROM AND AFTER the decease of the said A. B., whether the aforesaid trust for his benefit shall have determined or not, do and shall, during the life of the said C. D., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit the same to be received by, her the said C. D. and her assigns during her life; AND FROM AND AFTER the determination of the trust declared for the benefit of the said A. B. as aforesaid, (whether the same shall happen in his lifetime or not), and the decease of the said C. D., do and shall stand and be possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST &c. [*usual trusts for children, as in Precedent I., supra, pp.* 317, 318.—*Hotchpot clause, supra, p.* 319.—*Advancement clause, supra, p.* 377.—*Maintenance*

—and to pay the income to the husband for life, or until bankruptcy, insolvency, &c.;

—and if preceding trust determine during the joint lives of the husband and wife, then to pay the income during the joint lives to the separate use of the wife;

—and after the decease of the husband, to the wife for life;

—and, subject to the preceding trusts, the funds to be for the children of the marriage, with trusts over.

(*e*) With respect to provisions of this nature, see supra, p. 367, n. (*a*).

ARTICLES ON MARRIAGE OF FEMALE INFANT.

clause, supra, p. 378 (f).—Accumulation clause, supra, p. 321.—Trusts, in default of children entitled, as to the money secured by the husband's covenant and the investments of it in trust for him, subject to the wife's life interest, supra, p. 400. "And as to, for, and concerning all other the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon the trusts following, (that is to say)," *usual trusts for the wife and her appointees or next of kin, subject to the trust for the benefit of the husband, supra, pp. 379, 380*]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that in the meantime, and until the said plantations or estates, hereditaments, and premises, by the said will directed or authorized to be sold as aforesaid, shall be sold accordingly, or the part or share, parts or shares, in or to which the said C. D., her executors or administrators, or the said A. B. in her right, shall or may, or if these presents or any assignment in pursuance of the agreement hereinbefore in that behalf had not been executed, would or might for the time being be interested or beneficially entitled under the said will, shall be sold under the power or authority to be vested in the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, as hereinbefore is mentioned, the clear rents, issues, produce, and profits of such part or parts, share or shares, of the said plantations or estates, hereditaments, and premises, or of the unsold part or parts thereof for the time being, (after keeping down any interest or other annual charge or charges which may be payable thereout, and also after paying thereout a proportionate share of the expenses of managing and cultivating the said plantations or estates

Rents and profits of the estate until a sale to go as income of the purchase-money.

Advancement and maintenance clauses.

(*f*) As the husband's determinable life estate is, in this precedent, the first life estate, instead of taking effect only if he survive the wife, the advancement and maintenance clauses will not be precisely similar in language to those referred to in the text; but there will be no difficulty in making the requisite alterations, as the present case is simpler than that treated in Precedent VI.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

and premises, or of the unsold part thereof for the time being), shall be received by the trustees or trustee for the time being under these presents, and paid and applied in the same manner as the interest of the monies to arise from the sale thereof would for the time being be applicable, under the trusts hereinbefore declared, in case the same were then sold (*g*); AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, by these presents, in manner following, (that is to say), that in case the said intended marriage shall take effect, he the said A. B., his heirs, executors, and administrators, and all and every person or persons having or claiming, or who shall or may have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, of, in, to, or out of the said plantations, estates, hereditaments, and premises, by the said will of the said B. D. directed to be sold as aforesaid, by, from, under, or in trust for him the said A. B., or his heirs, executors, or administrators, shall and will do, make, and execute all such acts, deeds, conveyances, assignments, assurances, and instruments in the law as shall or may be necessary for enabling the executors or administrators of the said B. D., or other the person or persons authorized or intrusted under the said will to make such sale or sales as aforesaid, and to carry into execution the aforesaid trusts or directions declared or contained in the said will for making such sale or sales as aforesaid, or for enabling the aforesaid E. F. and G. H. or the survivor of them, or the executors or administrators of such survivor, to make and carry into effect any sale or sales of the said one third part or share, or other part or share, parts or shares, of or in the said plantations or estates, hereditaments, and premises, or any of them, or any part thereof, under the power or authority so to be vested in them or him in that behalf, as hereinbefore is mentioned: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said A. B. shall be desirous that the said principal sum of £——, secured by his covenant hereinbefore con-

Covenant by the husband for further assurance of the wife's interest under the will.

Trustees may allow money to remain on security of husband's covenant, if he as-

(*g*) See other forms of this proviso, supra, pp. 366, 423.

ARTICLES ON MARRIAGE OF FEMALE INFANT.

tained, or any part thereof, shall continue on the security of the same covenant after the expiration of the said —— calendar months from the solemnization of the said intended marriage, and shall and do, at his own costs and charges, before the expiration of the said —— calendar months, effect in the name or names of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, a policy or policies of assurance on the life of him the said A. B. in a sum or sums not less in the whole than the sum of £——, then and in such case the said E. F. and G. H. and the survivor of them, and the executors or administrators of such survivor, shall permit and suffer the said sum of £——, secured by the said covenant as aforesaid, or so much thereof as the said A. B. shall not think proper previously to pay or discharge, to continue on the security of the said covenant until the death of the said A. B., if the said A. B. shall in the meantime pay interest for the same at the rate of —*l.* per cent. per annum, and if the said A. B. shall, at his own costs and charges, keep on foot the said policy or policies of assurance (*h*), and the monies to be thereby respectively assured shall be a further and collateral security for the payment of the said sum of £——, and interest, intended to be secured by the said covenant, or so much thereof as shall remain unpaid, and, subject thereto, shall be in trust for the said A. B., his executors, administrators, and assigns (*i*). [*Trustees' receipt clause, supra, p. 352 (k). Power to appoint new trustees, supra, p. 324. — Clauses for the indemnity and payment of trustees, supra, pp. 326, 327*]. IN WITNESS &c.

sure his life and pay interest.

(*h*) With respect to the effect of provisoes of this nature, see supra, p. 367, n. (*a*), p. 381, n. (*o*), p. 396, n.

Provisions for keeping up the policies not necessary in this case.

(*i*) As the trustees are to call in the money secured by the covenant, whenever the husband ceases to keep his life assured, it does not seem necessary to make any provision for keeping up the policies of assurance. If, however, any circumstances should require the introduction of such provisions into the settlement, they may be readily adapted from the forms supra, pp. 384, 423.

(*k*) See supra, p. 461, n. (*d*), as to extending the protection of the clause to mortgagees advancing money to the trustees of the settlement.

XIV.

OF A WARD OF CHANCERY AFTER MARRIAGE.

SETTLEMENT AFTER MARRIAGE, *under the direction of the* COURT *of* CHANCERY, *of the Fortune of a* FEMALE INFANT, *a Ward of the* COURT (*a*). REAL *Estate to be* SOLD; *and the* PROCEEDS *thereof, and the* PERSONAL *Estate to be vested in Trustees,* IN TRUST *to pay a* SUM *to the* WIFE *for her* SEPARATE USE, *and subject thereto In trust for the Separate Use of the Wife for Life, and, after her Death, for her Children and Issue as she shall appoint, and, in default, equally.* SHARES *of* CHILDREN DYING *to go to their* ISSUE. IN DEFAULT *of Children or Issue, the Funds to go as the Wife shall appoint, and, in default of appointment, to the Husband for Life, and, after his Death, to the Wife or her Next of Kin of her own blood.* SPECIAL CLAUSES *as to* MAINTENANCE *and* ADVANCEMENT.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*the husband*], and C. B., [*his wife*], of the first part; Parties.

(*a*) As to settlements on the marriages of infants generally, see supra, p. 455, n. (*a*).

A ward of the Court of Chancery not permitted to marry without a proper settlement approved of by a Master.

When an infant ward of the Court of Chancery is about to marry, the Court refers it to a Master to approve of a proper settlement; and, unless a proper settlement is proposed, the Court will not give the infant leave to marry; (*Smith* v. *Smith*, 3 Atk. 304); and this rule holds good as well in the case of a male as of a female infant. (*S. C.* and *Earl of Plymouth* v. *Lewis*, Dick. 801). There do not appear to be many cases as to the nature of the settlement which the Court in such cases requires; but it seems that the income should be given to the wife for the joint lives of herself and her husband for her separate use, and without power of anticipation, (*Miss Watson's case*, 18 Ves. 434), and the other ordinary

OF A WARD OF CHANCERY AFTER MARRIAGE.

I. K., of &c., [*the mother and next friend of the wife, and also a trustee*], of the second part; and E. F., of &c., and

trusts, such as are given supra, Precedent I., p. 309, would probably be approved of.

To marry a ward without the consent of the Court, is a contempt;

The Court never permits an infant ward to marry without its consent; and to marry a ward of Court without consent is a contempt of Court, even though the father of the infant be living; (*Butler* v. *Freeman*, Amb. 300); or though the parties concerned had no notice the infant was a ward of Court. (*Herbert's case*, 3 P. Wms. 116). Most of the cases have occurred on the marriages of female wards; and the Court punishes the contempt by committing the husband until he executes (or, in some cases, undertakes to execute, *Stackpole* v. *Beaumont*, 3 Ves. 89) such a settlement of the wife's property as the Court shall approve; and in cases in which, in the prosecution of the affair, the husband has committed an indictable offence, the Court will direct him to be indicted. (*Priestley* v. *Lamb*, 6 Ves. 421; *Millet* v. *Rowse*, 7 Ves. 419; *Pearce* v. *Crutchfield*, 16 Ves. 48). Where, however, both the ward and the husband were foreigners, and the property was abroad. and the marriage took place in Scotland on the same day that the bill was filed constituting the wife a ward, the Court did not commit the husband, but ordered him to attend from time to time, and to be at liberty to make proposals. (*Salles* v. *Savignon*, 6 Ves. 572).

—and punished accordingly.

How far a husband marrying a female ward without consent is allowed an interest in the wife's property.

In most of the cases, the husband has been a man of no property, who married apparently for the sake of the fortune; and the Court has generally refused to give him any interest in the property; (*Balls* v. *Coutts*, 1 Ves. & Bea. 303); but where he is of equal rank and fortune with the wife, and makes an equivalent provision for her out of his own property, it does not seem that the same rule would be enforced. (*Id.*). And when the husband has no property, and the contempt has not been a flagrant one, the costs of making the settlement may be paid out of the fund. (*Anonym.* 4 Russ. 473). And even in a very flagrant case, in which the husband had been prosecuted for, and convicted of, a conspiracy, he was allowed to receive a sum of £2000 out of his wife's fortune, in order to pay debts which he had alleged he had contracted for her. (*Pearce* v. *Crutchfield*, 16 Ves. 48: see, however, *Chassaing* v. *Parsonage*, 5 Ves. 15). And in another case, Lord *Eldon* gave the husband an annuity out of the property, even during the coverture, observing, that there could not be much expectation of happiness where the husband had nothing, and the wife had the sole control over the property. (*Bathurst* v. *Murray*, 8 Ves. 74). In one case, indeed, the Court thought a settlement would be proper, in which the whole income was given to the husband for the joint lives, and a moiety of it to him, if he survived; (*Stevens* v. *Savage*, 1 Ves. jun. 154); but this was a peculiar

G. H., of &c., [*trustees*], of the third part; [*Recital of a will and settlement under which the wife is entitled to a*

Recitals of instruments under which the wife is entitled;

case, and a settlement giving the husband only a moiety of the income during coverture, was finally adopted.

The usual settlement directed by the Court in cases of this kind, gives the income to the wife for her life for her separate use, and without power of anticipation; the capital, after her decease, to be for the children of the marriage, as she shall appoint, and in default of appointment, for sons attaining twenty-one, and daughters attaining twenty-one or marrying. The disputed points are most generally the provision to be made in default of there being any children of the marriage who shall become entitled, and the provision to be made in case of the wife surviving her present husband and marrying again.

Usual settlement directed by the Court after a marriage in contempt;

The approved trust in default of children entitled seems to be, that which gives the fund to the wife absolutely, if she survive her husband, but if she die in his lifetime, gives her a power of appointment *by will only*, and in default of such appointment, divides the fund among the persons of her own blood entitled under the statutes of distribution. (*Millet* v. *Rowse*, 7 Ves. 419; *Bathurst* v. *Murray*, 8 Ves. 74; *Pearce* v. *Crutchfield*, 16 Ves. 48; *Birkett* v. *Hibbert*, 3 My. & K. 227). The power of appointment is made exercisable by will only, in order that the wife may not be induced to execute any irrevocable instrument in her husband's favour; and it is no objection, but rather an advantage, as tending to ensure the husband's good behaviour, that the wife has the power of giving him an interest by will. (*Bathurst* v. *Murray*, *Birkett* v. *Hibbert*, ubi supra). The Court considers that the object of the settlement is the benefit and protection of the ward, and not the punishment of the husband; (3 My. & K. 230); and, therefore, the absolute interest in or power to appoint the fund is always given to the wife in default of children becoming entitled. See, however, *In the matter of Anne Walker*, Cas. Temp. Sugd. 299, the remarks of Sir Edward Sugden, p. 325.

—especially in default of children of the first marriage becoming entitled.

The Court also deems it essential that the settlement should provide for a sufficient settlement on a second marriage, in the event of the wife surviving her husband and marrying again. (*Wells* v. *Price*, 5 Ves. 398; *Halsey* v. *Halsey*, 9 Ves. 471; *Long* v. *Long*, 2 Sim. & Stu. 119). This is sometimes done, as in the text, by settling the capital after the wife's death among all her children by any marriage; (*Millet* v. *Rowse*, 7 Ves. 419); but the most approved provision seems to be, that the wife shall have a power of appointing to each child of the second marriage a sum not exceeding the share of each child of the first marriage. (*Bathurst* v. *Murray*, 8 Ves. 74; *Birkett* v. *Hibbert*, 3 My. & K. 227). It may be suggested, however, that the most suitable provision would be one of those given supra, p. 378, and p. 420, which enables the wife to give an income to the husband, as well as a capital fund to the children of the se-

The settlement must contain a provision for a second marriage of the wife.

OF A WARD OF CHANCERY AFTER MARRIAGE.

—of the institution of a suit in Chancery, and of the decree for carrying the trusts of the instruments into effect, and of an order made in the cause.

share of real and personal estate on attaining twenty-one or marrying; of the death of the testator, and the probate of the will]; AND WHEREAS, shortly after the decease of the said testator, a suit was instituted in the High Court of Chancery on behalf of the said C. B. and M. K. [*her sister*] by the said I. K. [*their mother and next friend*] against the said —— [*trustees of the will and settlement*], for the purpose of carrying the trusts of the said will and settlement into execution under the direction of the said Court, and the said several defendants having put in their answers, the cause came on to be heard before The Right Honorable the Master of the Rolls on the —— day of ——, when it was ordered and decreed that the said indenture of the —— day of —— [*the settlement*] and the said will of the said —— [*testator*], so far as related to the messuages and premises, and furniture and effects thereby devised and bequeathed to the said —— [*trustees*], in trust for the benefit of the said C. B. and M. K., ought to be performed and

---

cond marriage. No doubt the husband of the second marriage is a proper object to be provided for, and in the case of *Halsey* v. *Halsey*, 9 Ves. 471, a settlement was disapproved of because it provided for a future *husband* and children only by powers over the wife's real estate, which during her infancy the wife could not exercise.

The jurisdiction of the Court, after the ward has attained twenty-one.

It is to be observed, that the Court retains its jurisdiction over the property of a ward, after the ward has attained twenty-one, so long as the property remains in Court, and, if the ward marries, will order a proper settlement to be made, or reform an improper one, unless the ward consents to the settlement, either in Court or under a commission. (*Austen* v. *Halsey*, 2 Sim. & Stu. 123; *Basely's case*, cited Ibid.). And even after the husband's death, and the birth of a child, a settlement was set aside at the suit of the wife. (*Long* v. *Long*, 2 Sim. & Stu. 119). This, too, was a very strong case, for the wife did not marry till the day after she came of age, and had actually joined in a petition that the fund to which she was entitled might be carried to the settlement account. But if the ward after attaining twenty-one *duly* consents to any settlement, of whatever nature, and whether made before or after her attaining that age, the Court will not interfere, but will order the funds to be transferred to the trustees of the settlement. (*Austen* v. *Halsey*, *Long* v. *Long*, ubi supra; *Leeds* v. *Barnardiston*, 4 Sim. 538). If, however, a husband has been discharged from custody upon his undertaking to make a settlement, the Court will not permit him to receive her fortune. (*Stackpole* v. *Beaumont*, 3 Ves. 89).

OF A WARD OF CHANCERY AFTER MARRIAGE.

carried into execution, and the same was decreed accordingly; and it was ordered that the said —— [*trustees*] should transfer into the name of the Accountant-General of the said Court in trust in that cause £——, —*l.* per cent. Annuities, and £——, like annuities, which had been invested by them in their names out of the surplus dividends of the said sum of £——; AND WHEREAS the said —— [*trustees*] have transferred the said sums of £—— and £——, —*l.* per cent. Annuities, into the name of the Accountant-General of the said Court, to the credit of the said cause; AND WHEREAS, on or about the —— day of ——, the said C. B. intermarried with the said A. B., [*her present husband*], she being then an infant and a ward of the said Court of Chancery; AND WHEREAS, by an order of the said Court, bearing date the —— day of ——, made in the said cause, and in another cause wherein the said M. K., by her next friend, was plaintiff, and the said A. B. and C. B. [*his wife*] were defendants, It was ordered, that it should be referred to ——, the Master, to whom the said causes stood referred, to inquire and certify whether the marriage, stated to have been solemnized between the said A. B. and C. B., was a legal and valid marriage, and if the said Master should find that the same was a legal and valid marriage, then it was ordered that he should approve of a proper settlement to be made on such marriage, and should state the same to the Court; And it was ordered, that any parties interested should be at liberty to lay proposals before the said Master; AND WHEREAS the said Master, by his report, bearing date the —— day of ——, made in pursuance of the said order of the —— day of —— in the same year, certified that he had proceeded upon the matters so referred to him by the said order, and a proposal having been laid before him on behalf of —— [*the trustees of the will and original settlement*], and a state of facts and a proposal having also been laid before him on behalf of the said A. B., he had considered thereof, and found that the marriage in the said order stated to have been solemnized between the said A. B. and C. B. was a legal and valid marriage, and he had therefore proceeded to consider of a proper settlement to be

—of a transfer of stock in pursuance of the order;

—of the marriage having taken place;

—of an order referring it to the Master to approve of a settlement;

—of the Master's report in pursuance;

OF A WARD OF CHANCERY AFTER MARRIAGE.

made on such marriage; and that, having considered both of the said proposals, he was of opinion that the following would be a proper settlement to be made on such marriage (that is to say), [*sets out the report as to the terms of the settlement verbatim*]; AND WHEREAS, by a further order made in the said causes on the —— day of ——, it was referred to the said Master to review so much of his said report as related to the settlement to be made on the marriage of the said A. B. and C. B., and to inquire and state to the Court whether any settlement or agreement for a settlement was made or entered into previously to the marriage of the said C. B. and A. B., and if so, that the said Master should approve of a proper settlement to be made on such marriage, regard being had to the same; AND WHEREAS the said Master, by his report, bearing date the —— day of ——, made in pursuance of the said lastly recited order, certified that he had proceeded on the matters referred to him by the said lastly recited order, and found that, previously to the said marriage, a certain agreement for settlement had been made and duly executed, bearing date the —— day of ——, and made or expressed to be made between the said A. B., of the first part; the said C. B., by her then name of C. K., of the second part; and —— and ——, of the third part; And that thereby &c., [*sets out the Master's statement of this agreement*]; And the said Master thereby also certified, that the said —— [*trustees*] had proposed before him that the settlement to be made on the marriage of the said C. B. with the said A. B., (meaning the settlement so approved of by the said Master as aforesaid), should be varied by introducing the following powers, (that is to say), [*sets out the powers proposed in the report*]; And that they the said —— [*trustees*] had submitted to him, that, regard being had to the said articles of agreement, and to the circumstances under which the said marriage took place, the settlement so as aforesaid approved of, with the before-mentioned additions, was a fit and proper settlement to be made on the marriage of the said A. B. and C. D., and they therefore proposed that the whole of the property of the said C. B., as well vested as con-

—of an order referring it to the Master to review his report, regard being had to a supposed antenuptial settlement;

—of the Master's report in pursuance;

OF A WARD OF CHANCERY AFTER MARRIAGE.

tingent, should be settled, and that all the interest under the said agreement should be released, and the said Master certified that he had considered thereof, and had reviewed his said report dated the —— day of —— last, and approved of the settlement therein stated to have been approved of by him, with the addition of the said powers or clauses so proposed by the said —— [*trustees*], as a proper settlement, having regard to the said agreement so therein mentioned as aforesaid; AND WHEREAS, by another order made in the said causes on the —— day of ——, it was ordered that the said order made in the said causes bearing date the —— day of —— should be discharged, and it was declared that the agreement for a settlement in the lastly recited report stated to have been made and entered into by the said A. B. and C. B. then C. K., previous to their said marriage, was void and of no effect (*b*), and it being alleged that the said agreement was then in the possession of ——, it was ordered that the same should be cancelled by them, and it was ordered that the said Master's report, dated the —— day of ——, should be confirmed, with the following variation in the settlement which the said Master had approved, videlicet, [*sets out the proposed variation*]; And it was ordered that the residue of the said C. B.'s property, both real and personal, and as well vested as contingent, (subject to the payment of the costs, charges, and expenses thereinafter directed to be taxed), should be settled, conveyed, and assured, To the use, upon the trusts, and for the several ends, intents, and purposes which the said Master had by his said report, bearing date the —— day of ——, approved of, with such variation as before mentioned; And it was ordered that the said Master should settle and approve of a proper deed or proper deeds for carrying the same into execution, And all proper and necessary parties were ordered to join in and execute such deed or deeds as the said Master should direct;

—of another order discharging the last order, and confirming the settlement proposed on the first report, with variations;

—and referring it to the Master to approve of a settlement;

(*b*) This agreement would, of course, be binding only on the husband, until duly confirmed by the wife after coming of age. (See *Long* v. *Long*, 2 Sim. & Stu. 119; *Austen* v. *Halsey*, 2 Sim. & Stu. 123; *Leeds* v. *Barnardiston*, 4 Sim. 538, stated supra, p. 467, n. (*a*)).

OF A WARD OF CHANCERY AFTER MARRIAGE.

And it was referred to the said Master to tax (as between solicitor and client) the costs, charges, and expenses of the said M. K. and I. K., and of the aforesaid A. B. and C. B., therein mentioned; And it was ordered that so much of the said sum of £——, —*l.* per cent. Annuities, standing in the name of the Accountant-General of the said court in trust in the cause —— *v.* ——, "the trust account of C. B.," (being the residue of the said C. B.'s moiety of the said sum of £——, like annuities, remaining in the hands of the said Accountant-General after making certain payments thereout directed by another order made in the said causes dated the —— day of ——), as would be sufficient cash to raise the said costs, charges, and expenses when so taxed and settled as aforesaid, should be sold with the privity of the said Accountant-General, and one of the cashiers of the bank was to have notice to attend and receive the money to arise by such sale, who, upon receipt thereof, was to pay the same into the bank, to be there placed to the credit of the said cause, the like account; And out of the money to arise by such sale, it was ordered that the said costs, charges, and expenses be paid in manner therein mentioned, and upon the execution of the said deed or deeds by all necessary parties, such execution to be certified by the said Master, it was ordered that out of the money so to be raised as aforesaid the sum of £—— be paid to the said C. B. for her sole and separate use, And that the residue of the said sum of £——, —*l.* per cent. Annuities, and the dividends to accrue due thereon until the carrying over thereof thereby directed, and the said sum of £—— cash in the bank placed to the credit of the said cause, the like account, be carried over in trust, and placed to the credit of the cause ——, to an account to be intitled "The marriage settlement account of C. B.;" And it was ordered, that the sum of £—— cash, when so carried over, and the dividends to accrue due on the said sum of £——, —*l.* per cent. Annuities, or the residue thereof after such sale as aforesaid, as and when the same should from time to time become due, be paid to the

—and tax the costs;

—which are to be paid out of the funds specified;

—and giving directions respecting the funds in Court;

OF A WARD OF CHANCERY AFTER MARRIAGE.

said C. B. during her life, or until the further order of the Court, for her sole and separate use, And any of the parties were to be at liberty to apply to the Court as there should be occasion; AND WHEREAS the said Master, by his further report in the said cause, bearing even date herewith, hath certified that he hath settled and approved of these presents as and for a proper settlement of the said C. B. pursuant to the aforesaid reports, and the said order confirming the same, dated the —— day of ——, and, in testimony of such his approbation, hath signed his allowance thereof in the margin of the last skin of the engrossment of these presents, and his name in the margins of the other skins of the same engrossment. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said order dated the —— day of ——, and for carrying the same into effect, and in consideration of the said marriage having been solemnized between the said A. B. and C. B. as hereinbefore is mentioned, he the said A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant (*c*) with the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, that when and so soon as the said C. B. shall attain her age of twenty-one years, or as soon thereafter as conveniently may be, they the said A. B. and C. B. shall and will, at the cost of the said trust estates and premises, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, conveyances, and assurances in law whatsoever, as may be necessary, and as they the said A. B. and C. B., his wife, lawfully can or may make, do, or execute, for the purpose of well and effectually conveying to and vesting in the said E. F., G. H., and I. K., their heirs, executors, administrators, or assigns, ALL THE ESTATE, right, title, interest, as well vested as contingent, of the said C. B., and of the said A. B. in her right, of, in, and to the said messuage, lands, and hereditaments, furniture and stocks, si-

—of the Master having approved of the present deed as a proper settlement.

Witnesseth, covenant by the husband that on his wife attaining twenty-one, the real estate shall be conveyed to the trustees.

(*c*) As to the form of settlements when the wife is an infant, see supra, p. 458, n. (*c*); and for some general remarks on settlements on the marriages of infants, see supra, p. 455, n. (*a*).

OF A WARD OF CHANCERY AFTER MARRIAGE.

tuate at ——, and so devised to the said —— [*trustees*], in trust as hereinbefore is mentioned, freed and discharged from the said agreement so entered into by the said A. B. before his said marriage, which in pursuance of the aforesaid order in that behalf hath been cancelled: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, respectively, do and shall stand seised and possessed of or otherwise interested in the said hereditaments and premises so covenanted to be conveyed and assigned to them as aforesaid, and every of them, and every part thereof, upon trust that they the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators, respectively, of such survivor, do and shall, with the consent in writing of the said C. B., during her life, and after her decease at their or his discretion, absolutely sell and dispose of the said hereditaments and premises hereinbefore covenanted to be conveyed and assigned to them, &c., [*ordinary trusts for sale, see supra, p.* 346]: AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that the said trustees or trustee may, at their or his discretion, sell the moiety of the said C. B., immediately after the same shall have been conveyed as aforesaid, or may wait until the said sister of the said C. B. shall attain the age of twenty-one years, and join with her in the sale of the entirety of the said hereditaments and premises, and further that the contingent interest of the said C. B. shall not be sold until the same may have fallen into possession: AND IT IS HEREBY FURTHER AGREED AND DECLARED that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the sum or sums of money to arise and be produced by any such sale as aforesaid, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for the purpose of carrying into complete effect the said order

Upon trust for sale.

Directions as to the time and manner of effecting a sale.

Trusts of the purchase-money to be subsequently declared.

Witnesseth, further, assignment of money owing to the wife on a bond.

OF A WARD OF CHANCERY AFTER MARRIAGE.

in that behalf, and in consideration of the premises, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT and those the share and interests, as well vested as contingent, of him the said A. B. of and in the said sum of £——, so secured by the said bond of the said —— as hereinafter is mentioned, And also of and in all interest henceforth to accrue due for the same (*d*): AND ALL THE ESTATE, &c., TOGETHER WITH, &c., [*Power of attorney, see supra, p.* 336]: TO HAVE, HOLD, receive, and take the said share, estate, and interest, And all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for the purpose and considerations aforesaid, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that he the said A. B., his executors or administrators, shall and will, at his or their own costs and charges, when thereunto required, make, do, and execute, or join and concur with the said E. F., G. H., and I. K., their executors or administrators, or the said C. B., or any other person or persons, in making, doing, and executing, all such acts, matters, and things, either by application to the Court of Chancery or otherwise, as shall be requisite or necessary for obtaining or procuring the residue of the share and interest of the said C. B. of and in the said sum of £——, —*l.* per cent. Annuities, subject to the payment of the said costs, charges, and expenses, and £——, like annuities, to be transferred to and vested in the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor: AND IT IS HEREBY AGREED and declared that the said E. F., G. H.,

Witnesseth, further, covenant by the husband to do all acts necessary for transferring to the trustees the stock belonging to the wife.

Trusts of the purchase-monies of the real

(*d*) The husband can assign this interest by virtue of his marital right in the wife's property.

OF A WARD OF CHANCERY AFTER MARRIAGE.

estate, of the money on bond, and of the stock.

and I. K., their executors, administrators, or assigns, do and shall stand possessed of and interested in as well the share of the said C. B. in the last-mentioned stocks or funds, and the dividends thereof, as all and every the monies to arise from the sale of the said messuage, hereditaments, and premises hereinbefore directed to be sold, and the monies to be received in respect of the shares of the said C. B. in the said sum of £——, hereinbefore assigned as aforesaid, shall be invested, in pursuance of the aforesaid directions in that behalf, and upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same, (that is to say), UPON TRUST, that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, from and immediately after the execution of these presents, or so soon afterwards as conveniently can be, by sale or transfer of a competent part thereof, cause or procure to be levied and raised the sum of £——, and cause the same to be paid to such person or persons and in such manner as the said C. B. shall by any writing order or direct, and in default of any such direction, into the proper hands of the said C. B., for her separate use, and the receipt of her or her appointee or appointees for the same to be a sufficient discharge(*e*); AND, SUBJECT AS AFORESAID, do and shall call in and convert into money all such of the premises as shall not consist of money, or of such stocks, funds, and securities as are hereinbefore mentioned, and do and shall, with the consent of the said C. B. during her life, and after her death at the discretion of them the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, lay out and invest the monies to arise from such calling in and conversion into money, and also such of the said pre-

In the first place, to pay a gross sum to the wife for her separate use;

—and invest the residue in the usual manner, with power to vary securities;

(*e*) This does not seem to be a usual provision in settlements on a marriage in contempt; but it may obviously be highly convenient, even if not necessary for the comfort of the parties. (See *Pearce* v. *Crutchfield*, 16 Ves. 48, and supra, p. 468, n.).

OF A WARD OF CHANCERY AFTER MARRIAGE.

mises as shall consist of money, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland, and do and shall from time to time, with such consent or at such discretion as aforesaid, alter, vary, and transpose as well the said last-mentioned stocks, funds, and securities, as such of the aforesaid premises as shall originally consist of such stocks, funds, or securities as aforesaid; AND DO AND SHALL, &c., [*trust as to the income for the separate use of the wife for life, see supra, p.* 315]; AND FROM AND AFTER the decease of the said C. B., do and shall stand possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every, or such one or more, exclusively of the other or others of the children or child of the said C. B. by the said A. B., or any future husband (*f*) with whom she may intermarry, and who shall be living at the time of her decease, and the issue living at the time of the decease of the said C. B. of any such child or children who may happen to die in her lifetime, with such provision for their respective maintenance and education or advancement, at such age, day, or time, or respective ages, days, or times, if more than one, in such shares and proportions, and with such annual sums of money and limitations over for the benefit of the said children or issue, or some or one of them, and upon such conditions, with such restrictions, and in such manner as the said C. B. shall, by her last will and testament, or any codicil or codicils thereto, direct or appoint; AND IN DEFAULT of and until such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST for all and every the children and child of the said C. B. by the said A. B., or such future husband as aforesaid, who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, to be divided between or among such children, if more than one,

—and pay the income to the wife for life for her separate use;

—and after her decease, hold both capital and income in trust for all the children of the wife or their issue, as she shall by will appoint;

—and in default of appointment, for all the children of the wife, who, being sons, attain twenty-one, or, being daughters, attain twenty-one or marry, equally.

(*f*) With respect to the method of providing for the children of a second marriage, see supra, p. 469; and infra, p. 484, n. (*n*).

OF A WARD OF CHANCERY AFTER MARRIAGE.

in equal shares or proportions, and if there shall be but one such child, the whole to be in trust for such one child: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that if any son of the said C. B. shall die under the age of twenty-one years, leaving issue, and such issue, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or be married, then and in every such case such issue of every such son so dying as aforesaid shall have and be entitled to the share or shares of and in the said trust monies, stocks, funds, and securities, which the deceased parent of such issue respectively would have been entitled to under the trusts aforesaid if such parent had lived to attain the age of twenty-one years, and such issue, if more than one, shall take their deceased parent's share equally between them (*g*): PROVIDED ALWAYS, that in case there shall be no person who shall attain a vested interest (*h*) in the said trust monies, stocks, funds, and securities under the aforesaid trusts, they the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand possessed of and interested in all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, IN TRUST for such person or persons, and for such intents and purposes, and in such manner and form as the said C. B. shall, by her last will and testament, or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, whether covert or sole, direct or appoint; AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, UPON TRUST from and after the decease of the said C. B., and such default or failure of issue as aforesaid, to pay to or otherwise permit the said

Proviso that certain of the issue of children not attaining a vested interest, may take their parent's expectant shares.

Trusts in default of children or issue becoming entitled under the previous trusts;

—as the wife shall by will appoint;

—and in default of appointment, for the husband for life.

(*g*) In this settlement, the hotchpot, advancement, maintenance, and accumulation clauses are placed in an unusual position. (See infra, p. 482). They should be in this place.

(*h*) See supra, p. 322, n. (*n*).

OF A WARD OF CHANCERY AFTER MARRIAGE.

A. B. to receive the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, when and as the same shall respectively become due and payable during his life (*i*); AND FROM AND AFTER the decease of the said A. B., upon trust as to all and singular the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, for such person or persons as under the statutes for the distribution of intestates' effects, would, at the decease of the said C. B., have been entitled to the same in case the said C. B. had died possessed thereof, intestate and unmarried, and domiciled in England (*k*). AND THIS INDENTURE ALSO WITNESSETH, that, for the purpose aforesaid, and in consideration of the premises, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT the share of him the said A. B., in right of the said C. B., of and in the rents, issues, and profits of the said messuage, land, and premises, to accrue due or be received in the meantime and until the said share and interest of and in the said messuage, land, and premises shall be conveyed and assured to the said E. F., G. H., and I. K., their heirs and assigns, according to the covenant hereinbefore contained; AND ALL THE ESTATE, &c.: TO HAVE, HOLD, receive, and take the same rents, issues, and profits, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F., G. H., and

Witnesseth, further, assignment by the husband to the trustees of the rents and profits which will accrue on the real estate before the conveyance to them, to be applied as the income of the purchase-money.

(*i*) This provision is unusual in settlements on marriage in contempt; it is deemed better to leave the husband's interest, if he survive his wife, entirely in her disposition. (See *Millet* v. *Rowse*, 7 Ves. 419; *Bathurst* v. *Murray*, 8 Ves. 74; *Birkett* v. *Hibbert*, 3 My. & K. 227; see, too, supra, p. 468).

(*k*) This provision as to domicile is intended to guard against the effect of the rule, that personal property on an intestacy is to be distributed according to the law of the country where the intestate was domiciled at death. It is seldom, however, inserted.

Domicile.

OF A WARD OF CHANCERY AFTER MARRIAGE.

I. K., their executors, administrators, and assigns, to be applied, nevertheless, upon the same trusts as are hereinbefore declared of the dividends, interest, and annual produce of the said trust monies, stocks, funds, and securities, the trusts whereof are hereinbefore declared: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that, after the said hereditaments shall be so conveyed as aforesaid, and before the same shall be so sold as aforesaid, the rents and profits thereof, and also the interest of the share of the said C. B. in the sum of £——, so secured by the said bond as aforesaid, shall be applied in the same manner as is hereinbefore directed with respect to the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that no child or children, or issue of any child or children, taking any part of the said trust monies, stocks, funds, or securities under or by virtue of any direction or appointment to be made by the said C. B., &c., [*hotchpot clause, supra, p.* 319 (*l*)]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times during the lifetime of the said C. B., in case the said C. B. shall so direct, by any writing or writings under her hand and seal, and they the said trustees or trustee for the time being of these presents shall think fit, to levy and raise, by sale or other disposition of a competent part or parts of the said trust monies, stocks, funds, and securities, such a sum of money as to the said trustees or trustee for the time being shall think proper, to be applied for the maintenance, education, and advancement in life, either by marriage or otherwise, of any child or children of the said C. B., either by the said A. B. or any future husband, and in such manner as the said C. B.

Rents and profits after conveyance, and before sale and interest on bond, to be applied as income of purchase-money and investments.

Hotchpot clauses.

Special clause for advancement, and for maintenance and education out of the capital, with further provision as to hotchpot.

(*l*) This and the following clauses for advancement, maintenance, and accumulation are improperly placed. (See supra, p. 480, n. (*g*)).

and the trustees or trustee for the time being as aforesaid shall think fit; but it is hereby agreed and declared that no greater sum shall be raised, for any one child under the aforesaid power in that behalf, than a moiety of the then expectant or presumptive share of such child in the said trust monies, stocks, funds, and securities, PROVIDED NEVERTHELESS, that no child, for whose use any sum or sums of money shall have been so raised as aforesaid, shall have or be entitled under the aforesaid trusts to any share in the remainder of the said trust monies, stocks, funds, and securities, without first bringing into hotchpot the said monies so paid as aforesaid, and accounting for the same accordingly, unless the said C. B. shall direct to the contrary (*m*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that after the decease of the said C. B. it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at their or his discretion, to levy and raise by the ways and means aforesaid any part or parts of the then expectant or presumptive share or shares of any such child or children or issue as aforesaid, of and in the said trust monies, stocks, funds, and securities under the trusts hereinbefore declared, not exceeding in the whole for any one such child one moiety of his, her, or their expectant portion or portions, and to pay and apply the same for his, her, or their preferment, advancement, or benefit, in such manner as the said trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, shall, after the decease of the said C. B., pay the whole or such part as the said trustees, or the survivor of them, or the executors or administrators of such survivor, shall think fit, of

OF A WARD OF CHANCERY AFTER MARRIAGE.

Common advancement clause extended to issue.

Maintenance clause extended to issue.

(*m*) This very unusual clause will of course not be inserted, unless by a special direction.

OF A WARD OF CHANCERY AFTER MARRIAGE.

the interest, dividends, and annual produce of the share or respective shares to which any child or children, or issue of any deceased child or children, of the said C. B. shall or may for the time being be entitled in expectancy of and in the said trust monies, stocks, funds, and securities under the trusts hereinbefore declared, to be applied for or towards the maintenance and education of such child or children or issue respectively, in the meantime and until such his, her, or their portion or portions shall become vested and payable, AND DO AND SHALL, &c., [*Accumulation clause, supra, p.* 321]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, in case the said A. B. shall die in the lifetime of the said C. B., it shall be lawful for the said C. B. to appoint any part of the aforesaid trust monies, stocks, funds, and securities, not exceeding in the whole one third part, to or for the benefit of any husband whom the said C. B. may afterwards marry, and the children or child of any future marriage, so that the same appointment be with the consent of the trustees or trustee for the time being of these presents, and so that the husband of the said C. B. do not take any greater interest therein than a life interest in the dividends and annual produce of the share which may be so appointed of the said stocks, funds, and securities: PROVIDED NEVERTHELESS, that no child taking any benefit under any appointment to be made as last aforesaid, shall have or be entitled to any share in the residue of the said trust monies, stocks, funds, and securities, without bringing the share which such child may so take into hotchpot, and accounting for the same accordingly, unless the said C. B. shall by writing direct to the contrary (*n*);

Accumulation clause.

Power for the wife, if she survive her husband, to settle part of the funds on a second marriage.

Hotchpot clause as between the children of the present and such second marriage.

(*n*) The mode adopted in this settlement of providing for the husband and children of a second marriage appears very awkward; it would be better to confine the trusts of this settlement to the children of the present marriage, and then to give the wife *a power only* of settling a part of the fund on the husband and children of a second marriage. (See *Bathurst* v. *Murray*, 8 Ves. 74; *Birkett* v. *Hibbert*, 3 My. & K. 227, and supra, p. 469, n.). Forms of such a power, more elaborately drawn than that in the text, will be found supra, pp. 378, 420.

Mode of providing for the husband and children of a second marriage.

OF A WARD OF CHANCERY AFTER MARRIAGE.

PROVIDED NEVERTHELESS, and it is hereby agreed and declared, that, notwithstanding the trusts, provisions, and declarations hereinbefore contained, the residue of the said sum of £——, —*l.* per cent. Annuities, after deducting thereout such sum as aforesaid, shall, pursuant to the said order of the —— day of —— last, be and remain in the Bank to the credit of the said cause ——, to the account to be intitled "The marriage settlement account of C. B.;" AND THAT when the clear surplus of the monies to arise from the sale of the said hereditaments and premises hereinbefore directed to be sold, and also the aforesaid share of the said sum of £——, shall be received, an application shall be made to the said court in the said cause for an order that the same shall be paid by the said trustees into the Bank of England, in the name of the Accountant-General, to the credit of the cause to the like account, and shall be invested in the purchase of stocks, as is usual in like cases, to remain in the Bank to the credit of the said cause ——, to be transferred to the said account to be entitled "The marriage settlement account of the said C. B.;" AND THAT the dividends of all the said stocks shall from time to time, as they become due, be paid to the said C. B. for her separate use as aforesaid, for her life, or until the further order of the Court; BUT, NEVERTHELESS, the trustees or trustee for the time being of these presents, or any other of the parties interested in the trust premises, shall be at liberty from time to time to apply to the said Court of Chancery for an order or orders for the transfer of the said stocks or funds, or any part thereof, to the trustees or trustee for the time being of these presents, if and whensoever it shall become necessary that any such transfer or transfers should be made, in order that the said stocks or funds may by such trustees or trustee be applied to the uses, intents, and purposes in and by these presents expressed and declared of and concerning the same (*o*): AND

Proviso that the stocks shall remain in the name of the Accountant-General of the Court of Chancery;

—and the other trust monies, as received, shall be laid out in his name;

—the dividends to be paid to the wife for life;

—and the trustees or other parties to apply for the funds when needed, for the purposes of the trust.

Covenants by

(*o*) The introduction of a provision of this nature appears to be required only in cases of flagrant contempt. (See *Millett* v. *Rowse*, 7 Ves. 419).

OF A WARD OF CHANCERY AFTER MARRIAGE.

THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that he the said A. B. shall not or will, at any time or times hereafter, prevent or disturb the said C. B., her appointees, executors, administrators, or assigns, from holding, enjoying, receiving, taking, and disposing of for her separate use, the monies and effects provided for her separate use under the trusts aforesaid; AND ALSO, that it shall be lawful for the said C. B. from time to time, during her coverture, to dispose of the savings of her separate income by deed or will, or from hand to hand, or otherwise, as she shall think proper (*p*); AND THAT if she the said C. B. shall die in the lifetime of the said A. B., then that he the said A. B., his executors and administrators, shall and will permit and suffer the will and codicil or codicils (if any) of the said C. B. to be duly proved by the executors therein named, or otherwise, as occasion shall require (*q*); AND THAT he the said A. B. and the said C. B. shall and will, from time to time and at all times hereafter, at the request of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, and at the expense of the said trust monies, stocks, funds, and securities, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, and things whatsoever as shall or may be necessary or requisite for establishing, corroborating, and confirming these presents, and every clause, matter, and thing herein contained, and for the better enabling the said E. F., G. H., and I. K., their executors, administrators, and assigns, to perform and execute the trusts hereby in them respectively reposed, as by

the husband not to disturb the wife in her enjoyment of the income for her separate use;

—and to allow her to dispose of her savings;

—and to allow her will to be proved;

—and for further assurance.

(*p*) This seems to be the rule of equity, independently of special stipulation. (*Sir Paul Neal's case*, cited in *Herbert* v. *Herbert*, Pre. Cha. 44; *Mangey* v. *Hungerford*, 2 Eq. Ca. Abr. 156; *Slanning* v. *Style*, 3 P. Wms 337; *Gore* v. *Knight*, 2 Vern. 535; see, too, 1 Vern. 244; *Gold* v. *Rutland*, 1 Eq. Ca. Abr. 346; *Cecil* v. *Juxon*, 1 Atk. 278).

(*q*) Probate may be had without the husband's consent, if the wife have power to make the will. (See Williams, Law of Executors, Part I. Book II. Ch. i. s. 11).

the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall be reasonably devised or advised and required: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, from and after the time when the share or interest of the said C. B. of and in the said messuage, land, and premises at —— shall be vested in the said E. F., G. H., and I. K., and from that time until the said messuage, land, and premises shall be sold, in pursuance of the trusts or direction hereinbefore in that behalf contained, it shall be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs of such survivor, with the consent in writing of the said C. B., to demise or lease, or to join or concur with the person or persons entitled to the other moiety of the said hereditaments and premises in demising or leasing, all or any part or parts of the said hereditaments and premises, with the appurtenances, to any person or persons for any term or number &c.: [*Power of leasing for twenty-one years, supra, p.* 351.—*Trustees' receipt clause, supra, p.* 352.—*Power to appoint new trustees, supra, p.* 324; *the power, however, being given to the surviving or continuing trustee, &c., ut ante, Vol.* 3, *p.* 294, *and to be exercised with the consent of the wife during her life.—Clauses for the indemnity and payment of trustees, supra, pp.* 326, 327]. IN WITNESS &c.

OF A WARD OF CHANCERY AFTER MARRIAGE.

Power of leasing.

Trustee clauses.

XV.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

SETTLEMENT *of Money given for the* INSTITUTION *of* PRIZES *for* ACADEMICAL *Objects.* PROVISIONS *for the Appointment of* JUDGES *for awarding the* PRIZES, *and general Regulations for the Management of the Trust.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*the donor*], of the first part; C. D., of &c., E. F., of &c., G. H., of &c., and I. K., of &c., [*the trustees*](*a*), of the second part; and the President and Governors of &c., [*title of the institution*], incorporated by &c., [*statement of the instrument and date of incorporation*], of the third part: WHEREAS the said A. B., being desirous of the advancement of sound learning and education, determined, with the consent and approbation of the said President and Governors, (testified by their being a party to and affixing their common seal to these presents), to institute a prize or prizes to be the subject of competition between students of the said school, and to be awarded and given under such regulations and according to such scheme as are hereinafter established and set forth; AND WHEREAS, for effecting such desire and determination, the said A. B. proposed to give and appropriate the sum of £—— sterling, to be laid out and applied in such manner as should be deemed most conducive to the purposes aforesaid; AND WHEREAS it was agreed that the sum of £—— should be laid out in the purchase, in the names of the said C. D., E. F., G. H., and I. K., of 3*l.* per cent. —— Bank Annuities, and that the said C. D., E. F., G. H., and I. K., their

Recital of the donor's desire to institute the prizes;

—of his proposal for that purpose;

—of the agreement that the donor should invest a sum of money in the names of trus-

(*a*) In settlements of this nature, it is desirable to have the largest number of trustees in whose names stock is allowed to stand in the Bank books, viz. four, in order to avoid the necessity of a frequent appointment of new trustees, and of the consequent transfers of the stock.

executors and administrators, should stand possessed of and interested in the said *3l.* per cent. —— Bank Annuities so to be purchased, and the dividends and annual proceeds thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same respectively; AND WHEREAS, in pursuance of the said agreement, the said A. B. has, with the privity and approbation of the said President and Governors, (testified as aforesaid), laid out the said sum of £—— in the purchase, in the names of the said C. D., E. F., G. H., and I. K., of the sum of £——, *3l.* per cent. Bank Annuities (*b*). NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and for effectuating the said desire of the said A. B., and in consideration of the premises, it is hereby agreed and declared between and by the parties to these presents, that the said C. D., E. F., G. H., and I. K., their executors, administrators, and assigns, do and shall stand possessed of and interested in the said sum of £——, *3l.* per cent. —— Bank Annuities, and the dividends and annual proceeds thereof: UPON TRUST, that the said C. D., E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall from time to time receive the dividends and annual proceeds which shall accrue due on the said sum of £——, *3l.* per cent. —— Bank Annuities, and by and out of the same pay and discharge, or retain to and reimburse themselves and himself all and singular the costs, charges, and expenses which they or he shall incur, or be put unto, in or about the receiving or obtaining payment of the said dividends and annual proceeds, or any of them, or otherwise in or about the execution of the trusts of these presents, or by reason thereof, or incidental thereto, and also pay and discharge all costs,

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

tees on the trusts to be afterwards declared;

—of the investment having been made.

Witnesseth declaration of trusts.

That the trustees shall receive the dividends, and thereout pay all necessary expenses;

(*b*) The proper investment for a fund intended to provide an income for a permanent object is the Three per cent. Bank Annuities, either consolidated or reduced; and it is better not to give a power to alter or vary the securities.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

charges, and expenses, (if any), which the said President and Governors, and the judges hereinafter named, or any of them, shall incur, or be put unto, in or about the execution of the trusts of these presents, or by reason thereof, or incidental thereto, and also the expenses of appointing new trustees and making transfers from time to time as occasion shall require, and all such other costs, charges, and expenses, for printing, advertising, or other purposes, as the said trustees or trustee for the time being of the said fund, and the said President and Governors, shall approve and deem conducive to the purposes hereinafter named (*c*); AND DO AND SHALL from time to time pay and apply the residue which shall remain, after answering and satisfying the trusts aforesaid of the said dividends and annual proceeds, as and for a prize or prizes, to be the subject of competition between the students of the said [*name of institution*], and to be awarded and given under such regulations and according to such scheme as are hereinafter established and set forth: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said C. D., E. F., G. H., and I. K., or any of them, or any future trustee or trustees to be appointed as hereinafter is mentioned, shall die (*d*), or be desirous of being discharged of and from, or refuse, or decline, or become incapable to act in the trusts or powers hereby in them reposed or to them given, then and in such case, and when and so often as the same shall happen, the surviving or continuing trustees or trustee for the time being, (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts shall, if willing to act in the exercise of this present power, be considered a continuing trustee or trustees),

—and apply the residue for the prizes, to be awarded as after mentioned.

Power to appoint new trustees.

(*c*) In settlements of this nature, the costs of appointing new trustees, and all other costs, should be made payable out of the income, and not out of the capital; for otherwise the whole capital will, by constant though gradual diminutions, be ultimately destroyed.

(*d*) As the trustees have little more to do than to receive the dividends and apply them in a specified manner, and as this can be done by any one trustee, it is not necessary to provide for removing a trustee who shall be abroad.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

or the executors or administrators of the last surviving trustee or continuing trustee for the time being, shall forthwith with all convenient speed, by some deed or deeds, instrument or instruments, in writing, sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, from time to time nominate, substitute, or appoint some one or more person or persons (to be selected out of the trustees of the general funds of the said [*name of the institution*], and to be approved of by the said President and Governors) to be a trustee or trustees in the stead or place of the trustee or trustees so dying, or becoming desirous of being discharged, or refusing, or declining, or becoming incapable to act as aforesaid, and that when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid the said sum of £——, *3l.* per cent. —— Bank Annuities shall, with all convenient speed, be transferred into the names of the surviving or continuing trustee or trustees, and such new or other trustee or trustees, or if there shall be no surviving or continuing trustees or trustee, then of such new trustees or trustee only, upon the trusts hereinbefore declared: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, and their intent is, that as soon as any two of them the said C. D., E. F., G. H., and I. K., or of other the trustees for the time being of the said trust fund, shall die, or be desirous of being discharged of and from, or refuse, decline, or become incapable to act in the trusts or powers hereby in them reposed or to them given, then and immediately thereupon two new trustees shall, by virtue of the power aforesaid, be substituted, nominated, and appointed, in the place or stead of the trustees so dying, or being desirous of being discharged, or refusing, declining, or becoming incapable to act as aforesaid, and that the power hereinbefore given to one surviving or continuing trustee, his executors or administrators, is only intended to be exercised in case any previous neglect or omission, or any accidental circumstances, shall render the exercise of the same absolutely necessary: [*Usual declarations that new trustees shall have the same powers as the*

Number of trustees not to be permanently reduced below two.

Usual trustee clauses.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

old, shall be chargeable and answerable only for their own acts and defaults, and not for the acts or defaults of the others, "except the same shall happen by or through their own wilful default respectively; and an omission or neglect to appoint a new trustee immediately upon a vacancy shall not be deemed a wilful default;" *see supra, pp. 325, 326 (e)*]. AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said desire of the said A. B., and in consideration of the premises, it is hereby agreed and declared between and by the parties to these presents, THAT, at some convenient time in the present and every future year, two subjects shall be selected by the judges hereinafter named for that purpose, and shall, in such manner as the said President and Governors shall deem expedient, be publicly proposed to the students for the time being of the said [*institution*], who shall be of —— years' standing and upwards in the said school, in order that such of the said students as may think fit so to do may compose and write essays on the said subjects, or either of them; THAT the time at which such subjects as aforesaid shall be publicly proposed as aforesaid shall precede the then next annual meeting of the said President and Governors by at least —— calendar months; THAT such of the said students of —— years' standing and upwards as shall have composed and written essays, or an essay, on the subjects aforesaid, or either of them, shall, within a certain time, (to be specified by the persons to be hereinafter named as judges, and to be publicly notified at the time and in the manner in which the said subjects shall be proposed), send such essay or essays to the President and Governors of the said school, each such essay to be distinguished by a motto to be thereupon indorsed or written; THAT every such essay shall be accompanied with a sealed envelope, on which shall be written the motto used to distinguish the essay, and which shall contain inclosed the name of the author of the essay; THAT the judges hereinafter named shall duly examine and consider the several essays which shall be so sent as aforesaid, and shall

Witnesseth, further, regulations as to awarding the prizes.

(e) The payment of the trustees' expenses is provided for in the principal trust.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

determine which one of the said essays on each subject proposed is the best and most deserving of reward; THAT, as soon as the best essays are so determined, the accompanying envelopes, distinguished by the same mottoes respectively, shall be opened by the said judges, and the name or names of the author or respective authors be examined; and in case he or they shall be found to be such a student or students as, under the regulations herein contained, or under any regulations to be made by virtue of any power or authority herein given, shall be duly qualified to send in essays, then the prizes hereinafter provided shall be awarded to such student or students, and the said trustees for the time being of the said sum of £——, 3*l.* per cent. —— Bank Annuities, shall pay to the said student or students the clear residue which shall have accrued due since the then last distribution of the said prizes, of the dividends and annual proceeds of the same annuities, if more than one such student, in equal shares, or in such other shares as the said judges shall direct; THAT if the said judges shall so think fit, they may direct the said clear residue to be laid out in the purchase of such books as they shall think fit, and that the said books shall be given to the said student or students instead of the money to which he or they may have become entitled under such award as aforesaid; THAT the said prize or prizes shall be awarded in every year before the general annual meeting for that year of the said President and Governors, and at each such next succeeding annual meeting the said President, or his locum tenens, shall publicly declare the name or names of the successful candidate or candidates, and the amount of money, or the book or books, awarded to him or them; THAT the prize or prizes so declared shall be paid or given to the student or students entitled thereto, at, or as soon as conveniently may be after, such annual meeting; THAT in case the author or authors of the best essay or essays shall be found to be not duly qualified to compete for the prize, then the said judges shall award the prize to such other essay as shall have been sent in as aforesaid by a person duly qualified to be a candidate, as the said judges shall consider to be next in merit; THAT in case in any year the

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

said judges shall be of opinion that, as to one of the two subjects, no one of the essays sent in is of sufficient merit to deserve the prize, then no prize shall be awarded for an essay on that subject, and one prize only, namely, for an essay on the other of the two subjects, shall be awarded, and in such case the whole of the said net residue of the said dividends, or such books as aforesaid, shall be given to the author of such one essay as the said judges shall consider to deserve a prize (*f*): THAT the persons hereinbefore referred to as the judges, who shall select the subjects of the said essays and award the prizes, shall be &c. (*g*); THAT in case the said —— [*the judges*], or any of them, shall refuse or neglect, or be unable or unwilling to act as judges, then and in every such case the said President and Governors shall fill up the said vacancies or vacancy for the time being by nominating one or more, as the case may be, out of the persons hereinafter named, to supply the said vacancies or vacancy, and the persons or person so nominated shall, if willing to act, have all the same powers and authorities as the judge or judges hereby appointed, whose place or places such person or persons shall be so nominated to fill, would have had under these presents, if willing to act; THAT the person or persons out of whom such vacancies shall be supplied, shall be &c. (*h*); THAT in case none of the said persons out of whom such vacancies are to be supplied shall be willing or able to act, or in case the said —— [*judges named*], shall be unable or unwilling to act, then and in any such cases, and so often as the same shall happen, such of the said judges as shall for the time being be able and willing to act, shall alone propose the subjects, or award the prizes, as the case may be, in manner

Provisions as to the judges by whom the prizes are to be awarded.

(*f*) It seems reasonable, that if no essay on one of the subjects be of sufficient merit to deserve a prize, the judges should have a discretion to award prizes to two essays on the other subject, should there be two essays of sufficient merit on that subject.

(*g*) In the case in the text, the judges named were not individuals, but the persons for the time being filling certain specified offices.

(*h*) In this place, too, not individuals, but persons for the time being filling certain specified offices, were named.

OF MONEY GIVEN FOR THE INSTITUTION OF PRIZES.

aforesaid, and shall have all the same powers and authorities in every respect as if the whole number of the said judges had acted; THAT in case of any difference of opinion between the acting judges for the time being as to the merit of any essay, or as to any other point connected with the duties hereby imposed on them, then such difference shall be determined in favour of that opinion for which the largest number of the said acting judges for the time being shall give their votes; and in case, on any such difference, the number of votes on each side shall be equal, then the judge who shall be senior among the said acting judges shall give a second or casting vote, and the difference shall be determined in favour of that opinion for which such second or casting vote shall be given; THAT he shall be reckoned the senior amongst the said acting judges who shall have been for the longest time qualified to act as judge, yet so that no one of the persons hereinbefore named merely to supply vacancies shall be entitled to give a casting vote, but such vote is to be given by the senior amongst the acting judges of the judges originally named; and in case all the said acting judges shall be equal in point of seniority, then the casting vote shall be given by such one of the acting judges for the time being as is first hereinbefore named as a judge: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for ——, at any time or times, to make any new regulations with respect to the essays and prizes as aforesaid, either instead of the regulations herein contained, or in addition thereto; and such regulations, when so made, shall be of the same force and effect as if they had been inserted in these presents, and the regulations herein contained (if any) instead of which they shall be made had been omitted from these presents (*i*). IN WITNESS &c.

Manner of settling differences of opinion among the judges.

Power to make new regulations.

(*i*) The expediency of reserving a power of this nature is obvious; not only because it is difficult, at the first trial, to frame for purposes of this nature such a settlement as shall work satisfactorily, but because the objects of the settlement may, by change of circumstances, be rendered unattainable. To whom, however, the power should be reserved, is not easy to say; it must depend on the will of the donor.

XVI.

REAL ESTATE WITH USUAL CLAUSES.

SETTLEMENT *on* MARRIAGE, *of* FREEHOLD *and* COPYHOLD *Estates by Appointment and Lease and Release, and Covenant to surrender.* DECLARATION *of* USES—AS TO *an Advowson for the Husband's Father for Life*—AS TO *the other Hereditaments to the Use of Trustees for a Term to raise an* ANNUITY *by Way of* PIN-MONEY—AS TO *all the Hereditaments,* (*subject as aforesaid*), *to the* HUSBAND *for* LIFE—*Remainder to* TRUSTEES *to preserve* CONTINGENT REMAINDERS—LIMITATIONS *to the Wife of* TWO JOINTURE RENT-CHARGES, (*to take Effect in different Events*), *with Powers of* DISTRESS *and* ENTRY—*of a* TERM *to secure the same—of a* TERM *to raise* PORTIONS *for Younger Children, with the usual Clauses as to such Portions—to the* FIRST *and* OTHER SONS *of the Marriage in* TAIL MALE—*with* REMAINDER IN FEE. POWER *for the Husband to* LIMIT *a* JOINTURE *and* CHARGE PORTIONS *on any subsequent Marriage.* POWERS *to grant* MINING LEASES—LEASES *for Twenty-one Years*—BUILDING AND REPAIRING LEASES—*and* LICENSES *to* COPYHOLDERS *to demise and do other* ACTS—POWERS *of* ENFRANCHISEMENT *and of* SALE *and* EXCHANGE—TRUSTEE CLAUSES—COVENANTS *for* TITLE (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN C. B., of &c., and —— his wife, of the first part; A. B., of &c., [*the*

General observations on settlements.

(*a*) For some general observations on the progress and nature of settlements of real property, see Harg. & Butl. Co. Litt. 290. b., n. (1), V.; Id.

REAL ESTATE WITH USUAL CLAUSES.

intended husband], (the eldest son and heir apparent of the said C. B.), of the second part; E. D., of &c., and C. D., of &c., (the third daughter of the said E. D., an infant under the age of twenty-one years (*b*)), [*the intended wife*], of the third part; I. K., of &c., and L. M., of &c., [*releasees and trustees to preserve contingent remainders*], of the fourth part; N. P., of &c., and Q. R., of &c., [*trustees of the pin-money term*], of the fifth part; S. T., of &c., and U. V., of &c., [*trustees of the jointure term*], of the sixth part; and X. Y., of &c., and Y. Z., of &c., [*trustees of the portions term*], of the seventh part: WHEREAS, under and by virtue of an indenture of bargain and sale duly enrolled in his Majesty's Court of Common Pleas at Westminster, bearing date the —— day of ——, and made or expressed to be made between [*parties*], and of three common recoveries duly suffered in pursuance of the same indenture in Easter term, in the —— year of the reign of his late Majesty King ——, before his Majesty's justices of the Court of Common Pleas at Westminster, and of certain indentures of lease and release bearing date respectively the —— and —— days of ——, the release being made or expressed to be made between [*parties*], the several manors of &c., in the counties of —— and ——, and the manor of ——, in the county of ——, with their re-

Recital of assurances, by virtue of which certain hereditaments stand limited to such uses as the husband and his father shall jointly appoint;

271. b., n. (1), V.; Butl. Fearne on Conting. Rem., 562, n. (*h*), 9th ed.; IV. Cru. Dig. by White, Tit. XXXII. chap. xxiv. s. 6 et seq.; ante, Vol. I. Art. SETTLEMENTS, and supra, p. 308.

ments of real estate;

The precedent in the text, in spite of its length, is very nearly of the simplest description; for, with the exception of the partial provision for the father and mother of the intended husband, it provides only for the husband and wife and the children of the marriage. It provides an annuity by way of pin-money for the wife during the joint lives of herself and her husband, and a jointure for her, if she survive the husband. It limits only one life estate—that of the husband—and one estate tail, viz. an estate in tail male for the first son of the marriage. Portions are provided for the younger children, and the husband is enabled to provide for a future wife and children should he survive his present wife and marry again. The other powers and clauses relate to the management and disposition of the estate.

—simplest form of.

(*b*) As to settlements on the marriages of infants, see supra, p. 455, n. (*a*).

REAL ESTATE WITH USUAL CLAUSES.

spective rights, members, and appurtenances, and the site of the late monastery or abbey of ——, in the same county, and the rectories of &c., in the same county, and the advowsons of the churches and rectories of &c. and of the churches and vicarages of &c., and of the chapels of &c., in the said county of ——; and also, all such and so many and such part or parts of the capital and other messuages, farms, lands, tenements, tithes, and other hereditaments particularly mentioned in the schedule hereunder written or hereunto annexed, as are not vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs, with their appurtenances, are and stand limited, To the use of such person or persons, and for such estate and estates, interest and interests, and in such sort and manner and form, as the said C. B. and A. B. shall during their joint lives, by any deed or deeds, instrument or instruments in writing, to be by them sealed and delivered in the presence of, and attested by, two or more credible witnesses, from time to time direct, limit, and appoint; AND WHEREAS a marriage has been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said several manors of &c., with their respective rights, members, and appurtenances, and the said site of the said late monastery and the said rectories of &c., and the said advowsons of the said churches and rectories of &c., and of the said churches and vicarages of &c., and of the said chapels of &c., and all the said capital and other messuages, farms, lands, tithes, and other hereditaments particularly mentioned in the schedule hereunder written or hereunto annexed, with their appurtenances, And all other the hereditaments, if any, in the said county of ——, or in that part of the parish of —— which lies in the said county of ——, over which they the said C. B. and A. B. have a joint power of appointment, or which are vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs, should be respectively appointed, conveyed, surrendered, settled, and assured, To the uses, upon and for the

—of the agreement for the marriage;

—of the agreement for the settlement;

REAL ESTATE WITH USUAL CLAUSES.

trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same respectively. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, and pursuant to and by force and virtue and in exercise and execution of the power or authority, or powers or authorities, in the said C. B. and A. B. for this purpose vested as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling them in this behalf, they the said C. B. and A. B., with the privity and approbation of the said E. D. and C. D., (testified by their severally being parties to and executing these presents), do, by this present deed or instrument in writing, by them sealed and delivered in the presence of, and attested by, the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by them the said C. B. and A. B., jointly direct, limit, and appoint (*c*), THAT the said manors of &c., and the said site of the said late monastery or abbey of ——, and the said rectories of &c., and the said advowsons of &c. &c., and all such and so many and such part and parts of the said capital and other messuages, farms, lands, tenements, tithes, and other hereditaments particularly mentioned and comprised in the said schedule hereunder written, or hereunto annexed, as are not vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs; And also, all and singular other hereditaments whatsoever, if any, in the said county of ——, or in that part of the parish of —— which lies in the said county of ——, which they the said C. B. and A. B. jointly have power in anywise to direct, limit, or appoint, TOGETHER WITH, &c. [*general words*] (*d*), SHALL, FROM AND AFTER

Witnesseth, appointment by the husband and his father;

—of the freehold hereditaments subject to their power;

(*c*) As to the mode of executing powers, see ante, Vol. 3, p. 211, n. (*e*).

(*d*) The estate clause is omitted in appointments. (See ante, Vol 3, p. 232, n. (*n*)).

REAL ESTATE WITH USUAL CLAUSES.

spective rights, members, and appurtenances, and the site of the late monastery or abbey of ——, in the same county, and the rectories of &c., in the same county, and the advowsons of the churches and rectories of &c. and of the churches and vicarages of &c., and of the chapels of &c., in the said county of ——; and also, all such and so many and such part or parts of the capital and other messuages, farms, lands, tenements, tithes, and other hereditaments particularly mentioned in the schedule hereunder written or hereunto annexed, as are not vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs, with their appurtenances, are and stand limited, To the use of such person or persons, and for such estate and estates, interest and interests, and in such sort and manner and form, as the said C. B. and A. B. shall during their joint lives, by any deed or deeds, instrument or instruments in writing, to be by them sealed and delivered in the presence of, and attested by, two or more credible witnesses, from time to time direct, limit, and appoint; AND WHEREAS a marriage has been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said several manors of &c., with their respective rights, members, and appurtenances, and the said site of the said late monastery and the said rectories of &c., and the said advowsons of the said churches and rectories of &c., and of the said churches and vicarages of &c., and of the said chapels of &c., and all the said capital and other messuages, farms, lands, tithes, and other hereditaments particularly mentioned in the schedule hereunder written or hereunto annexed, with their appurtenances, And all other the hereditaments, if any, in the said county of ——, or in that part of the parish of —— which lies in the said county of ——, over which they the said C. B. and A. B. have a joint power of appointment, or which are vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs, should be respectively appointed, conveyed, surrendered, settled, and assured, To the uses, upon and for the

—of the agreement for the marriage;

—of the agreement for the settlement;

REAL ESTATE WITH USUAL CLAUSES.

trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same respectively. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, and pursuant to and by force and virtue and in exercise and execution of the power or authority, or powers or authorities, in the said C. B. and A. B. for this purpose vested as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling them in this behalf, they the said C. B. and A. B., with the privity and approbation of the said E. D. and C. D., (testified by their severally being parties to and executing these presents), do, by this present deed or instrument in writing, by them sealed and delivered in the presence of, and attested by, the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by them the said C. B. and A. B., jointly direct, limit, and appoint (*c*), THAT the said manors of &c., and the said site of the said late monastery or abbey of ——, and the said rectories of &c., and the said advowsons of &c. &c., and all such and so many and such part and parts of the said capital and other messuages, farms, lands, tenements, tithes, and other hereditaments particularly mentioned and comprised in the said schedule hereunder written, or hereunto annexed, as are not vested in the said C. B. for an estate of inheritance in fee-simple, or for a customary estate of inheritance to him and his heirs; And also, all and singular other hereditaments whatsoever, if any, in the said county of ——, or in that part of the parish of —— which lies in the said county of ——, which they the said C. B. and A. B. jointly have power in anywise to direct, limit, or appoint, TOGETHER WITH, &c. [*general words*] (*d*), SHALL, FROM AND AFTER

Witnesseth, appointment by the husband and his father;

—of the freehold hereditaments subject to their power;

(*c*) As to the mode of executing powers, see ante, Vol. 3, p. 211, n. (*e*).

(*d*) The estate clause is omitted in appointments. (See ante, Vol 3, p. 232, n. (*n*)).

REAL ESTATE WITH USUAL CLAUSES.

the solemnization of the said intended marriage, go, remain, and be (*e*), To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed, declared, and contained of and concerning the same respectively. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, he the said C. B., with the privity and approbation of the said A. B., and also of the said E. D. and C. D., (testified by their severally being parties to and executing these presents), hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the said I. K. and L. M., (in their actual possession, &c., *ante*, *Vol. 3, p.* 198), and their heirs, ALL such and so many and such part and parts of the said capital and other messuages, farms, lands, tenements, tithes, and other hereditaments particularly mentioned and comprised in the said schedule hereunder written or hereunto annexed, and not of copyhold or customary tenure (*f*), as are not hereinbefore directed, limited, and appointed, or expressed and intended so to be; And also, all and singular other hereditaments whatsoever, if any, in the said county of ——, or in that part of the said parish of —— which lies in the said county of ——, or to which he the said C. B. is seised or in anywise entitled, for an estate of inheritance in fee-simple, TOGETHER WITH, &c. [*general words*]: To HAVE AND TO HOLD the said capital and other messuages, farms, lands, tenements, tithes, hereditaments, and all and singular other the premises hereby granted and released, or expressed and intended so to be, UNTO the said I. K. and L. M. and their heirs, To THE USE of the said C. B., his heirs and assigns, in the meantime, until the said intended mar-

—after the marriage;

—to the uses to be subsequently declared.

Witnesseth further, conveyance by the husband's father;

—of freehold hereditaments of which he is seised in fee.

Habendum.

To the releasees.

To the use of the grantor until marriage;

(*e*) The appointment is made to take effect only on marriage, thereby avoiding the necessity of limiting the estate to the old uses until marriage, as must be done when there is an immediate conveyance. See infra.

(*f*) See ante, Vol. 3, p. 354, n. (*e*).

riage shall be had and solemnized, AND FROM AND AFTER the solemnization thereof, TO THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the direction, limitation, and appointment, and grant and release hereinbefore contained, shall respectively operate and enure from and immediately after the solemnization of the said intended marriage, TO THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained, (that is to say), AS TO, FOR, AND CONCERNING the said advowsons of the churches and rectories of &c., and the said advowsons of the said chapels of &c., with their respective rights, members, and appurtenances, TO THE USE of the said C. B. and his assigns during his life: AND AS TO, FOR, AND CONCERNING all and singular other the hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, TO THE USE of the said N. P. and Q. R., their executors, administrators, and assigns, for the term of ninety-nine years, to commence and be computed from the solemnization of the said intended marriage, without impeachment of waste, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same: AND AS TO, FOR, AND CONCERNING all and singular the said manors, rectories, advowsons, capital and other messuages, farms, lands, tenements, hereditaments, and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, from and after the determination of, and in the meantime subject to, the uses or estates hereinbefore limited or created of or in the same respectively, TO THE USE of the said A. B. during his life, without impeachment

REAL ESTATE WITH USUAL CLAUSES.

—and after the marriage, to the uses to be subsequently declared.

Declaration of uses to take effect after the marriage.

As to advowsons, to the husband's father for life.

As to all other the hereditaments,

To the use of trustees for ninety-nine years, to raise annuities by way of pin-money.

As to all the hereditaments subject as aforesaid,

To the use of the husband for life.

REAL ESTATE WITH USUAL CLAUSES.

of waste, and from and after the determination of that estate, by forfeiture or otherwise, in the lifetime of the said A. B., To THE USE OF the said I. K. and L. M., their heirs and assigns, during the life of the said A. B., upon trust, to preserve the contingent uses and estates hereinafter limited, from being defeated or destroyed, and, for that purpose, to make entries and bring actions as occasion shall require, but, nevertheless, to permit and suffer the said A. B. and his assigns to receive and take the rents, issues, and profits of the said hereditaments and premises, for his and their own use during his life (*g*), AND IMMEDIATELY from and after the decease of the said A. B., To THE USE, intent, and purpose, that in case the said A. B. shall die during the joint lives of the said C. B. and C. D., she the said C. D. and her assigns shall and may thenceforth, during her life, receive and take the annual sum or yearly rent-charge of £——, and that in case the said C. B. shall die during the joint lives of the said A. B. and C. D., and the said C. D. shall survive the said A. B., she the said C. D. and her assigns shall and may, from and after the decease of the said A. B., receive and take, during her life, the annual sum or yearly rent-charge of £——, the said annual sum or yearly rent-charge of £—— or £—— (as the case may be,) to be in full for the jointure of the said C. D., and in lieu, bar, and satisfaction of all dower and free-bench, which, at common law or by custom, or otherwise, she might have, claim, or demand, in or out of all or any lands or hereditaments whatsoever, of which he the said A. B. now is, or shall, during the said intended coverture, be seised for an estate of inheritance or any other estate to

Remainder to trustees, during his life to preserve contingent remainders.

Limitation to the wife of two jointure rent-charges, to take effect in different events;

—to be in bar of dower;

Trusts to preserve contingent remainders.

(*g*) The object of this limitation is expressed in itself, viz. to preserve the subsequent contingent uses from being defeated by the destruction of the prior estate of freehold on which they depend. For the learning on this point, see Burton's Law of Real Property, arts. 775, et seq.; Harg. & Butl. Co. Litt. 290. b., n. (1), V. 4; Fearne on Conting. Rem. 326 et seq.; Lewin on the Law of Trusts and Trustees, chap. xviii.; ante, Vol. 1, Art. SETTLEMENTS; *Doe* d. *Lumley* v. *The Earl of Scarborough*, 3 Adol. & Ell. 1; the same case on appeal, Id. 897; and particularly the learned and elaborate arguments which were given in writing, and are stated Id. 942.

which dower or freebench is incident (*h*), AND to be chargeable upon and yearly issuing and payable out of all and singular the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, by EQUAL QUARTERLY PAYMENTS, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, without any deduction or abatement whatsoever on account or in respect of any taxes, charges, assessments, or impositions, [already taxed, charged, assessed, or imposed, or to be hereafter taxed, charged, assessed, or imposed, on the said hereditaments and premises, or any of them, or on the said annual sum or yearly rent-charge of £—— or £——, as the case may be, or any part thereof, or on the said C. D. or her assigns, in respect of the same by authority of Parliament,] (*i*), or otherwise howsoever, THE FIRST quarterly payment of the said annual sum or yearly rent-charge of £—— or £——, as the case may be, to be made on such of the said days of payment as shall happen next after the decease of the said A. B., AND TO AND FOR THIS FURTHER USE, intent, and purpose, that when and so often as the said annual sum or yearly rent-charge of £—— or £——, as the case may be, or any part thereof, shall at any time or times be unpaid by the space of twenty-one days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often it shall be lawful for the said C. D. and her assigns to enter into and distrain upon the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof, and to dispose of the distress or distresses then and there found according to law, to the intent that thereby, or otherwise, the said annual sum or yearly rent-charge of £—— or £——, as the case may be, and every part thereof so in arrear and unpaid,

REAL ESTATE WITH USUAL CLAUSES.

—to be charged on the settled lands;

—and paid quarterly;

—of the first payment to be made immediately after the husband's death.

Power of distress.

(*h*) As to settlements in bar of dower, see supra, p. 403, n. (*n*).

(*i*) The words in brackets, although usual, are superfluous, and may be omitted.

REAL ESTATE WITH USUAL CLAUSES.

and all costs, charges, and expenses occasioned by the nonpayment thereof, shall be fully paid and satisfied (*k*); AND TO AND FOR THIS FURTHER USE, intent, and purpose, that in case the said annual sum or yearly rent-charge of £—— or £——, as the case may be, or any part thereof, shall at any time or times be unpaid by the space of forty days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often (although there shall not have been any legal demand made thereof) it shall be lawful for the said C. D. and her assigns to enter into and upon, and to hold the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof, and to receive and take the rents, issues, and profits thereof, for her and their own use and benefit, until she and they shall therewith and thereby, or otherwise, be fully paid and satisfied the said annual sum or yearly rent-charge of £—— or £——, as the case may be, and the arrears thereof due at the time of such entry, or afterwards to become due during her or their being in possession of the same premises, Together with all costs, charges, and expenses which she or they shall sustain by reason of the nonpayment thereof, and such possession, when taken, to be without impeachment of waste, AND SUBJECT and charged as hereinbefore is mentioned, TO THE USE of the said S. T. and U. V., their executors, administrators, and assigns, for

Power of entry.

Limitation of a term to secure the jointure;

(*k*) The power of distress is now by statute incident to rent-charges; (3 Cru. Dig. by White, p. 285); but it is, nevertheless, usual expressly to limit a power of distress to the grantee of a rent-charge. The right of entry arises only when expressly granted, and in settlements is usually given by the operation of the Statute of Uses, as in the text. (See 3 Cru. Dig. by White, pp. 286, 287). It gives the party a chattel interest determinable on satisfaction of his arrears and costs. (Burton's Law of Real Property, Art. 867). In addition to these powers and remedies, a term of years is nearly always limited (as in the text) to trustees upon trust by sale or mortgage, or other reasonable means, to secure the payment of the jointure. It is, however, very seldom that the jointress is obliged to have recourse to her powers, as the reversioner usually pays the jointure in due course to save himself annoyance; and the remedy under the term is so very seldom called into action, that there will be no impropriety in dispensing with that additional security when brevity is an object.

The power and remedies annexed to jointure rent-charges.

REAL ESTATE WITH USUAL CLAUSES.

the term of two hundred years, to commence and be computed from the decease of the said A. B., without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same, AND FROM and after the expiration or other determination of the said term of two hundred years, and in the meantime subject thereto and to the trusts thereof, To THE USE of the said X. Y. and Y. Z., their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the decease of the said A. B., without impeachment of waste, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same, AND FROM and after the expiration or other determination of the said term of one thousand years, and in the meantime subject thereto, and to the trusts thereof, To THE USE of the first and every other son of the said A. B. on the body of the said C. D. lawfully to be begotten, severally, successively, and in remainder one after another, in order and course as they shall respectively be in priority of birth, and the heirs male of the body and respective bodies of all and every such son and sons issuing, the elder of such sons and the heirs male of his body issuing being always to take before and be preferred to the younger of such sons and the heirs male of their respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the survivor of them the said C. B. and A. B., his heirs and assigns for ever: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said hereditaments and premises are hereby limited to the said N. P. and Q. R., their executors, administrators, and assigns, for the said term of ninety-nine years, UPON TRUST, that they the said N. P. and Q. R., and the survivor of them, and the executors and administrators of such survivor, do and shall, during the joint lives of the said C. B. and ——, [*his wife*], by and out of the rents, issues, and

—and of a term to raise portions for younger children.

Limitation to the first and other sons of the marriage successively in tail male.

Remainder in fee to the survivor of the husband and his father.

Trusts of the pin-money term;

—to raise an annual sum for the wife of the husband's father during the joint lives of herself and her husband;

REAL ESTATE WITH USUAL CLAUSES.

profits of the premises comprised in the said term of ninety-nine years, or by mortgage or demise thereof for all or any part of the same term, or by bringing actions against the tenants or occupiers of the same premises for recovery of the rents and profits, or by more than one, or by all, of the ways and means aforesaid, or by any other reasonable ways or means, levy and raise the annual sum of £——, free and clear of and from all deductions for present or future taxes or impositions, or any other matter, cause, or thing whatsoever;

—for her separate use;

AND DO AND SHALL pay [apply and dispose of] the said annual sum of £—— by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, to [such person and persons only, and for such intents and purposes only, as the said ——, [*the wife of C. B.*], notwithstanding her coverture, shall from time to time, by any writing or writings, direct or appoint, And in default of such direction or appointment, into the proper hands of her] the said ——, [*the wife of C. B.*], for her sole and separate use, by way of pin-money, exclusively of the said C. B., who is not to intermeddle therewith, nor is the same to be subject to his debts, control, interference, or engagements, but so as that the said [*wife*] shall not have power to deprive herself of the benefit thereof, by any sale, mortgage, charge, or otherwise, in the way of anticipation, [either by direction or appointment, or any other disposition], and the receipts of the said [*wife of C. B.*], [and of her appointees], notwithstanding her coverture, to be effectual discharges to the person or persons paying the same for the money therein mentioned and acknowledged to be received (*l*);

—to commence immediately after the marriage.

THE FIRST quarterly payment of the said annual sum of £—— to be made on such of the said days of payment as shall happen next after the solemnization of the said intended marriage:

Further trust, to raise two annuities, (raiseable in different events);

AND UPON FURTHER TRUST, that they the said N. P. and Q. R., and the survivor of them, and the executors and administrators of such survi-

(*l*) The words within the brackets may be omitted; see the remarks on framing trusts for the separate use of married women, supra, p. 316.

REAL ESTATE WITH USUAL CLAUSES.

vor, do and shall, during the joint lives of the said C. B., A. B., and C. D., by all or any of the ways and means aforesaid, or by any other reasonable ways and means, levy and raise the annual sum of £——, free and clear of and from all deductions for present or future taxes or impositions, or any other matter, cause, or thing whatsoever, AND DO AND SHALL, in case the said C. B. shall die during the joint lives of the said A. B. and C. D., by all or any of the ways and means aforesaid, or by any other reasonable ways and means, levy and raise the annual sum of £——, free and clear of and from all deductions for present or future taxes or impositions, or any other matter, cause, or thing whatsoever; AND DO AND SHALL pay, apply, and dispose of the said annual sums of £—— and £—— respectively, by equal quarterly payments in every year, on the same days as are hereinbefore mentioned for the payment of the other annual sums hereinbefore made payable, to such person or persons &c., [*for the separate use of C. D., exclusive of A. B., but without power of anticipation, and her receipts to be discharges, ut supra, p.* 506], THE FIRST quarterly payment of the said annual sum of £—— to be made on such of the said days of payment as shall happen next after the solemnization of the said intended marriage, and the first quarterly payment of the said annual sum of £—— to be made on such of the said days of payment as shall happen next after the solemnization of the said intended marriage, and the decease of the said C. B.: AND, UPON THIS FURTHER TRUST, that they the said N. P. and Q. R., and the survivor of them, and the executors and administrators of such survivor, do and shall permit and suffer the person or persons who, under the limitations aforesaid, shall for the time being be entitled to the reversion or remainder of the premises immediately expectant upon the determination of the said term of ninety-nine years, from time to time to receive and take the residue and surplus of the rents, issues, and profits of all and singular the premises comprised in the said term of ninety-nine years for his and their proper use and benefit: PROVIDED ALWAYS, and it is hereby agreed and

—for the separate use of the wife during the joint lives of herself and her husband.

—the payments to commence at the times specified.

Further trust, to allow the reversioner to take the surplus rents and profits.

Proviso for

REAL ESTATE WITH USUAL CLAUSES.

declared between and by the parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of ninety-nine years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said N. P. and Q. R., and each of them, their and each of their executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) occasioned by, or relating to, the trusts hereby reposed in them, (and which they are hereby authorized and empowered to levy and raise by all or any of the ways or means aforesaid, or by any other reasonable ways or means, and to retain accordingly), the said term shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid) absolutely cease and determine (*m*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said hereditaments and premises are hereby limited to the said S. T. and U. V., their executors, administrators, and assigns, for the said term of two hundred years, UPON TRUST for better securing the payment of the said annual sums or yearly rent-charges of £—— or £—— hereinbefore respectively limited, whichever may become payable, at the days and times and in the manner hereinbefore mentioned and appointed for the payment of the same, without any deduction or abatement as aforesaid, FOR WHICH END and purpose it is hereby

cesser of the term.

Trusts of the term for securing the jointure.

Firstly, to per-

Provisoes for cesser of terms;

(*m*) Where terms of years are created by settlements, it is usual to provide that they shall cease when their object is at an end, in order to avoid the trouble and expense which would be incurred in obtaining a surrender. And in well-drawn deeds, this proviso is made to take effect either on the performance of the trusts, or on their becoming unnecessary or incapable of taking effect. (See 3 Sugd. V. & P. pp. 3—8, 10th ed.). It is indeed, there said, that the proviso should be made to take effect on any one of three events: 1st, the trusts never arising; 2ndly, their becoming unnecessary or incapable of taking effect; and, 3rdly, the performance of them; but the first case is obviously included in the second.

—how evaded.

With respect to the possibility of keeping such terms on foot by a fictitious disposition, see Id. p. 8.

REAL ESTATE WITH USUAL CLAUSES.

agreed and declared between and by the parties to these presents, that the said S. T. and U. V., and the survivor of them, and the executors and administrators of such survivor, do and shall permit and suffer the person or persons to whom the immediate reversion and remainder of the said hereditaments and premises, comprised in the said term of two hundred years expectant upon the determination thereof, shall for the time being belong, according to the limitations aforesaid, to receive and take the rents, issues, and profits of the same premises, until default shall happen to be made in payment of the annual sum or yearly rent-charge of £—— or £——, as the case may be, or some part thereof, at the times and in the manner hereinbefore appointed for the payment thereof; AND THAT, in case the said annual sum or yearly rent-charge of £—— or £——, as the case may be, or any part thereof, shall happen to be behind or unpaid by the space of forty days next after any of the said days whereon the same is hereinbefore directed to be paid, then and in such case, and so often as the same shall happen, the said S. T. and U. V., or the survivor of them, or the executors or administrators of such survivor, do and shall from time to time, by and out of the rents, issues, and profits of the hereditaments and premises comprised in the said term of two hundred years, or by demising or mortgaging the same premises, or any part thereof, for all or any part of the same term, or by bringing actions against the tenants or occupiers of the same premises for recovery of the rents and profits, or by more than one, or by all, of the ways and means aforesaid, or by any other reasonable ways or means, levy and raise and pay the said annual sum or yearly rent-charge of £—— or £—— so in arrear, and all arrears thereof which shall be then due and unpaid, or which shall afterwards, during their or his continuance in possession, accrue of the same, and all costs, charges, damages, and expenses, which the said C. D., her executors, administrators, or assigns, or the said S. T. and U. V., or either of them, their or either of their executors, administrators, or assigns, or any of them,

—mit the reversioner to take the rents and profits, till default in payment of the jointure;

—and on such default to obtain payment of the jointure and costs;

REAL ESTATE WITH USUAL CLAUSES.

shall be put unto by reason of the nonpayment thereof, or the recovery or obtaining payment thereof, or otherwise relating thereto, AND DO AND SHALL pay the surplus (if any) of the monies to be raised by the ways or means aforesaid to the person or persons next in remainder or reversion for the time being immediately expectant upon the determination of the said term of two hundred years, according to the limitations aforesaid: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that, subject to the trusts hereinbefore declared, the said S. T. and U. V., and the survivor of them, and the executors and administrators of such survivor, shall from time to time permit and suffer the rents, issues, and profits of the said hereditaments and premises comprised in the said term of two hundred years, or such part or parts thereof as for the time being shall not be wanted for the purposes for which the same term is hereby created, to be had, received, and taken by the person or persons who for the time being, under the limitations aforesaid, shall be seised of or entitled to the same premises in reversion or remainder expectant upon or subject to the same term, for his or their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, when the trusts hereinbefore declared of and concerning the said term of two hundred years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said S. T. and U. V., and each of them, their and each of their executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, (and which they are hereby authorized and empowered to levy and raise by all or any of the ways and means aforesaid, or by any other reasonable ways and means, and to retain accordingly), the said term of two hundred years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the

—and pay the surplus money received (if any) to the reversioner.

Further trust, to permit the reversioner to take the rents and profits.

Proviso for cesser of the term.

REAL ESTATE WITH USUAL CLAUSES.

trusts aforesaid), absolutely cease and determine (*n*); AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said hereditaments and premises are hereby limited to the said X. Y. and Y. Z., their executors, administrators, and assigns, for the said term of one thousand years, UPON TRUST, that if there shall be any child or children of the said A. B. on the body of the said C. D. lawfully to be begotten, (other than or besides an eldest or only son for the time being entitled, by virtue of or under the limitations hereinbefore contained, to the said hereditaments and premises for an estate in tail male, immediately expectant on the said term of one thousand years), then and in such case the said X. Y. and Y. Z., and the survivor of them, and the executors and administrators of such survivor, do and shall, after the decease of the said A. B., or in his lifetime, with his consent, signified by some writing under his hand, by mortgaging or otherwise disposing of the said hereditaments and premises comprised in the said term of one thousand years, or any of them, or any part thereof, for the whole or any part of the same term, or by, with, and out of the rents, issues, and profits of the same hereditaments and premises, or any of them, or by bringing actions against the tenants or occupiers of the same premises or any of them for the recovery of the rents and profits, or by more than one, or by all, of the aforesaid ways and means, or by any other reasonable ways or means, levy and raise for the portion or portions of such child or children (other than or besides an eldest son so for the time being entitled as aforesaid) such sum of money as is hereinafter mentioned, (that is to say), IF there shall be but one such child of the said A. B. by the said C. D., (other than an eldest or only son so for the time being entitled as aforesaid), the sum of £—— for the portion of such one child, to become and be an interest vested in, and to be paid to, such one child, whether a son or a daughter, on or at such age, day, or time as the said A. B. shall, by any deed or

Trusts of the term for raising portions for the younger children of the marriage.

To raise by the means specified.

If only one younger child, £——.

(*n*) With respect to the utility of this term for securing the jointure, see supra, p. 504, n. (*k*); and as to the proviso for cesser, see supra, p. 508, n. (*m*).

REAL ESTATE WITH USUAL CLAUSES.

deeds, instrument or instruments, in writing, with or without power of revocation and new appointment, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, from time to time direct or appoint, And in default of such direction or appointment, and so far as no such direction or appointment shall extend, to be an interest vested in such child, being a son, at his age of twenty-one years, and, being a daughter, at her age of twenty-one years or day of marriage, which shall first happen, and to be paid to him or her on or at the same age, day, or time, if the same shall happen after the decease of the said A. B., but if the same shall happen in the lifetime of the said A. B., then immediately after his decease: AND IF there shall be two children of the said A. B. by the said C. D., and not more, (other than an eldest or only son so for the time being entitled as aforesaid), then the sum of £—— for the portions of such two children: AND IF there shall be three children of the said A. B. by the said C. D., and not more, (other than an eldest or only son so for the time being entitled as aforesaid), then the sum of £—— for the portions of such three children: AND IF there shall be four or more children of the said A. B. by the said C. D., (other than an eldest or only son so for the time being entitled as aforesaid), then the sum of £—— for the portion of such four or more children, THE SAID SUMS of £——, £——, and £——, as the event shall happen, to be shared or divided between or amongst the children respectively entitled thereto, in such parts, shares, and proportions, and to be interests vested in, and to be paid to, them respectively on or at such ages, days, or times, and to be subject to such annual sum and sums of money and limitations over, such annual sum and sums of money and limitations over being for the benefit of some one or more of such children, (other than an eldest or only son so for the time being entitled as aforesaid), as the said A. B. shall, by any deed or deeds, instrument or instruments, in writing, with or without power of revocation, and new

If two younger children, £——.

If three younger children, £——.

If four younger children, £——.

—to be for such children as the husband shall appoint;

REAL ESTATE WITH USUAL CLAUSES.

appointment, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament, in writing, or any codicil or codicils thereto, from time to time direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, the said sums of £——, £——, and £——, as the event shall happen, to be shared and divided between or amongst the children entitled thereto respectively in equal shares and proportions, the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid to him, her, or them respectively on or at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the said A. B., but if the same respectively shall happen during the lifetime of the said A. B., then immediately after his decease (*o*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that in default of any such direction or appointment as aforesaid to the contrary, no child or children taking any part of the said sums of £——, £——, or £——, as the case may be, under or by virtue of any direction or appointment to be made by him the said A. B., in pursuance of the power or authority hereinbefore given to him for that purpose, shall have or be entitled to any further or other share of or in that part of the said sum of £——, £——, or £——, as the case may be, of which no such direction or appointment shall be made, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*p*): PROVIDED ALWAYS, and it is

—in default of appointment, for the children equally.

Hotchpot clause.

Clause of sur-

(*o*) As to the adoption of this method of settlement of the portions, see supra, p. 435, n. (*b*).

(*p*) As to this clause, see supra, p. 319, n. (*h*).

REAL ESTATE WITH USUAL CLAUSES.

hereby further agreed and declared between and by the parties to these presents, that if there shall be more than one such child for whom portions are intended to be hereby provided as aforesaid, and any of them, being a son or sons, shall die, or become an eldest or only son so for the time being entitled as aforesaid under the age of twenty-one years, or, being a daughter or daughters, shall die under the age of twenty-one years without having been married, then in case no such direction or appointment as aforesaid shall be made by the said A. B. to the contrary, as well the share or shares intended to be hereby originally provided for, as the share or shares by virtue of this present clause or proviso surviving or accruing to, each such son so dying, or becoming an eldest or only son so for the time being entitled as aforesaid, and for and to each such daughter so dying as aforesaid, or so much thereof as shall not have been raised and applied for the preferment or advancement in the world of any such son or sons, by virtue and in pursuance of the power or authority hereinafter in that behalf contained, shall go, accrue, and belong to the survivors or survivor, or others or other of such children, (not being an eldest or only son so for the time being entitled as aforesaid), and shall vest in and be paid to him, her, or them, if more than one, in equal shares and proportions, at such and the same time or times and in such and the same manner as is hereinbefore declared and expressed touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will admit: PROVIDED ALWAYS nevertheless, and it is hereby further agreed and declared between and by the parties to these presents, that the daughters or younger sons of the said A. B. by the said C. D., or any of them, shall not, by virtue of or under the trusts hereinbefore declared, be, by survivorship or otherwise, entitled to have any greater sum of money for his, her, or their respective portion or portions than are hereinafter mentioned, (that is to say), IF four or more children shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to portions under the trusts aforesaid, then the sum of £—— for the portions of such four or

vivorship and accruer.

Proviso that the portions of any child or children shall not, by survivorship or accruer, be increased beyond a given sum.

REAL ESTATE WITH USUAL CLAUSES.

more children; AND if three children and no more shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to portions under the trusts aforesaid, then the sum of £—— for the portions of such three children; AND if two children and no more shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to portions under the trust aforesaid, then the sum of £—— for the portions of such two children; AND if one child and no more shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to a portion under the trusts aforesaid, then the sum of £—— for the portion of such one child (*q*): AND UPON THIS FURTHER TRUST, that they the said X. Y. and Y. Z., and the survivor of them, and the executors and administrators of such survivor, do and shall, after the decease of the said A. B., by and out of the rents, issues, and profits of the said hereditaments and premises comprised in the said term of one thousand years, or any part or parts thereof, levy and raise for the maintenance and education of the child or children for the time being of the said A. B. by the said C. D., for whom a portion or portions is or are intended to be hereby provided as aforesaid, in the meantime, and until his, her, or their portion or respective portions shall become payable, such yearly sum or sums of money, not exceeding what the interest for the expectant portion or portions intended to be hereby provided for such child or children respectively would amount to after the rate of £—— for £100 by the year, as the said A. B. shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, direct or appoint, and in default of such direction or appointment, and so far as no such direction or appointment shall extend,

Maintenance clause—the maintenance to be raised as interest on the portions.

(*q*) The sums to which the portions for the specified numbers of children are restricted by this clause, are the original sums provided for the same numbers.

REAL ESTATE WITH USUAL CLAUSES.

such yearly sum or sums of money as the said X. Y. and Y. Z., or the survivor of them, or the executors or administrators of such survivor, shall for that purpose deem sufficient and proper, not exceeding the amount of such interest as aforesaid, the said yearly sum or sums of money for maintenance to be free and clear of and from all deductions for taxes or otherwise, and to be raised and paid in such manner and at such times as to them the said X. Y. and Y. Z., and the survivor of them, and the executors and administrators of such survivor, shall in that behalf seem meet (*r*):

Advancement clause.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said X. Y. and Y. Z., and the survivor of them, and the executors and administrators of such survivor, at any time or times during the life of the said A. B., with his consent and approbation, signified by some deed or deeds, instrument or instruments in writing, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, and after the decease of the said A. B., then of the proper authority of the said X. Y. and Y. Z., or of the survivor of them, or of the executors or administrators of such survivor, to levy and raise, by the ways and means aforesaid, or any of them, for the advancement or preferment in the world of any son or sons of the said A. B. by the said C. D., lawfully to be begotten, (other than or besides an eldest or only son so for the time being entitled as aforesaid), any sum or sums of money, not exceeding in the whole, for any one such son, one third part or share of his then expectant or presumptive portion, which same sum or sums of money shall be considered and taken to be in part of the portion or fortune provided, or intended to be provided, for such son or sons respectively, under or by virtue of the trusts of the said term of one thousand years, and to pay and apply the money so to be raised for the placing out, preferment, advancement, or benefit of such son or sons as the said A. B., during his life, shall think fit, and after the decease of the said A. B., as the said X. Y. and Y. Z.,

(*r*) As to this clause, see supra, p. 321, n. (*m*).

REAL ESTATE WITH USUAL CLAUSES.

or the survivor of them, or the executors or administrators of such survivor, shall, in their or his discretion, think fit, notwithstanding the portion or portions of such son or sons shall not then have been or become vested or payable (*s*): PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that the said X. Y. and Y. Z., or the survivor of them, or the executors or administrators of such survivor, shall not sell, mortgage, or demise any part of the said hereditaments and premises comprised in the said term of one thousand years, until one of the said portions, or some part thereof, shall become payable by virtue of and under the trusts aforesaid; AND THAT the rents, issues, and profits of the said hereditaments and premises, or so much of the same rents, issues, and profits as shall remain after answering the trusts aforesaid, shall, until one such portion shall become payable as aforesaid, be had and received by the person or persons who for the time being shall be entitled to the same hereditaments and premises in reversion or remainder expectant upon the determination of the same term, to and for his and their own use and benefit: PROVIDED ALWAYS, and it is further agreed and declared between and by the parties to these presents, that if the said A. B. shall give or advance to or with any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their portion or portions respectively, for his, her, or their preferment or advancement in the world, then and in such case, unless the said A. B. shall, by some writing under his hand, direct the contrary, if such advanced sum or sums of money shall be equal to or greater than the whole of the portion or portions intended to be hereby provided for such child or children severally as aforesaid, the same shall be accounted in full satisfaction of the whole of such his, her, or their portion or portions; but if such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of such his, her, or their

Portions not to be raised till they become payable;

—and the rents and profits (subject to the previous trusts) to be received by the reversioner.

Proviso, that sums paid by the father to the children, are to be taken in satisfaction of their portions pro tanto;

(*s*) As to this clause, see supra, p. 320, n. (*l*).

REAL ESTATE WITH USUAL CLAUSES.

portion or portions; and such money only shall be raised, under or by virtue of the trusts of the said term of one thousand years, for the portion or portions of the child or children to or with whom such sum or sums of money shall be so given or advanced by the said A. B. as aforesaid, as, together with the sum or sums of money so to be given or advanced, will amount to and complete the sum of money intended to be hereby provided for such child or children respectively, under or by virtue of the trusts of the said term of one thousand years; AND THEN and in such case the said A. B., his executors, administrators, or assigns, shall be entitled to receive the sum or sums of money so to be advanced by him as aforesaid, and the same shall be considered as part of his personal estate, unless the said A. B. shall, by some writing under his hand, direct the contrary (*t*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if it shall be desired, at any time or times during the life of the said A. B., to raise any sum or sums of money under the trusts hereinbefore declared of the said term of one thousand years, by mortgage or sale of all or any part of the said hereditaments and premises comprised in the same term, then and in every such case it shall be lawful for the trustees or trustee for the time being by whom the same shall be so raised, and they or he are and is hereby authorized and directed, by any deed to be executed by them or him in the presence of, and attested by, two or more credible witnesses, to limit and appoint the hereditaments and premises which shall be so mortgaged or sold, to the person or persons to whom the same shall be so mortgaged or sold under the trusts of the said term of one thousand years, for the term of three hundred years, to commence and be computed from the execution of the deed by which this present power shall be exercised, if the said A. B.

—and the father to receive the satisfied portions.

Power to raise the portions by mortgage in the lifetime of the father.

As to the satisfaction of portions by advancement by the father.

(*t*) With respect to the effect of this clause, see *Countess Gower* v. *Earl Gower*, 1 Cox, 53; *Pitt* v. *Jackson*, 2 Bro. C. C. 51; *Smith* v. *Lord Camelford*, 2 Ves. jun. 698; *Folkes* v. *Western*, 9 Ves. 456; *Noel* v. *Lord Walsingham*, 2 S. & S. 99.

REAL ESTATE WITH USUAL CLAUSES.

shall so long live, without impeachment of waste, but so that in case of a mortgage, the term so to be limited or appointed shall be made to cease or be redeemable on payment of the principal money to be secured, and the interest thereof, on or at the day or time, or days or times, and in the manner to be thereby appointed for the payment of the same respectively (*u*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, subject and without prejudice to the trusts hereinbefore declared, the rents, issues, and profits of the said hereditaments and premises comprised in the said term of one thousand years, or so much of the same rents, issues, and profits as shall from time to time remain after answering the trusts aforesaid, shall be had and received by the person or persons who for the time being shall be entitled to the same premises in reversion or remainder expectant on the determination of the same term, to and for his and their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that immediately after all the trusts hereinbefore declared of and concerning the said term of one thousand years shall in all respects be fully performed and satisfied, or shall have become unnecessary or incapable of taking effect, And the said X. Y. and Y. Z., and each of them, their and every of their executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses, (if any), to be occasioned by or relating to the trusts hereby reposed in them as aforesaid,

Subject to the preceding trusts, the reversioner to take the rents and profits.

Proviso for cesser of the term.

(*u*) In the absence of the power given by this proviso, it is very difficult in practice to make a security for any portions which it may be desired to raise in the lifetime of the father, because the term under the trusts of which they are to be raised only commences from the death of the father. If the father be willing to consent, a security may be made by demising his life estate; but this is a very awkward and inconvenient device, and might perhaps affect his right to exercise or consent to the exercise of the other powers in the settlement: and if the father do not concur, no efficient security can be made till after his death. The proviso in the text has been recently introduced in order to obviate these difficulties, but how it will work in practice is yet to be seen.

Power to raise portions in the lifetime of the father.

REAL ESTATE WITH USUAL CLAUSES.

(and which they are hereby authorized and empowered to levy and raise by all or any of the ways or means aforesaid, or by any other reasonable ways and means, and to retain accordingly), the same term shall, subject and without prejudice to any disposition or dispositions which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid, absolutely cease and determine (*v*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said C. D. shall die in the lifetime of the said A. B., then and in such case it shall be lawful for the said A. B., at any time or times and from time to time, either before or after his marriage with any other woman or women, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament, or any codicil or codicils thereto, to grant, limit, or appoint to any woman or women, or to any person or persons in trust for any woman or women, with whom he the said A. B. may marry after the decease of the said C. D., for her or their life or lives, and in full or in part only for or in the nature of her or their jointure or jointures, and in bar or without being n bar of her or their dower thirds and freebench, any annual sum or yearly rent-charge, or annual sums or yearly-rent charges, not exceeding for any one such woman the clear yearly sum of £——, to be issuing and payable out of, and charged and chargeable upon, all or any of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, (other than the said advowsons), and to be free from all taxes and deductions whatsoever, and to be paid at such times and in such manner as to him the said A. B. shall seem meet; AND for the purpose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, so to be appointed as aforesaid, to limit or appoint to the woman or women, or to any trustee or trustees for the woman or

Power to the husband to limit jointures to after-taken wives;

—with usual powers;

(*v*) As to this proviso, see supra, p. 308, n. (*m*).

REAL ESTATE WITH USUAL CLAUSES.

women respectively, to or for whom the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges, shall be appointed as aforesaid, usual powers and remedies for recovering and enforcing payment thereof respectively by distress and entry upon and detention of the possession, and perception of the rents, issues, and profits of the hereditaments and premises so to be charged with the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges; AND ALSO to limit and appoint the hereditaments and premises so to be charged as aforesaid to any person or persons whomsoever for any term or number of years, with or without impeachment of waste, to take effect immediately after the decease of the said A. B., upon the usual trusts for better securing the payment of the same annual sum or yearly rent-charge, annual sums or yearly rent-charges respectively, as to him the said A. B. shall seem meet, but so that such term of years be made to cease (subject and without prejudice to any disposition or dispositions which may be made under the trusts to be declared thereof as aforesaid) on the death of the woman for the benefit of whom the same shall be created, and the payment of the arrears of her rent-charge or rent-charges, and the expenses incurred by the nonpayment thereof (*w*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said C. D. shall die in the lifetime of the said A. B., it shall be lawful for the said A. B., at any time or times after the decease of the said C. D., and either before or after his marriage with any other woman, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament, or any codicil or codicils thereto, (but subject and

—and to limit terms of years for securing the same.

Power for the husband to charge portions for the children of any subsequent marriage;

(*w*) The importance of this power and of the following power to charge portions is obvious, for if they be wanting, and there be any child by the first marriage, the husband is deprived of the power of making any provision for his wife and children by a second marriage. The law concerning powers to jointure is fully stated, 2 Sugd. Pow. ch. xvi. 6th ed.; Chance on Powers, ch. xvi. s. 1. See too ante, Vol. 1, art. SETTLEMENTS.

Power in marriage settlements to jointure and charge portions on a future marriage.

REAL ESTATE WITH USUAL CLAUSES.

without prejudice to the said term of one thousand years and the trusts thereof), to subject and charge all or any part or parts of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, (other than the said advowsons), to and with the payment of any sum or sums of money, not exceeding in the different events hereinafter specified the different sums hereinafter mentioned, as and for the portion or portions of the child or children, or any one or more exclusively of the other or others of the children of the said A. B. by any after-taken wife or wives, (that is to say), in case there shall be only one such child the sum of £——, and in case there shall be two such children the sum of £——, and in case there shall be three such children the sum of £——, and in case there shall be four or more such children the sum of £——, to be an interest vested or interests vested in, and to be paid and payable and divisible unto or between or among, such child or children, or any one or more of such children respectively, at such age, day, or time, or respective ages, days, or times, in such manner, and, if more than one, in such shares and proportions, and to be subject to such powers of appointment by the said A. B., and to such powers or provisions for the advancement or preferment of any such son or sons, at the discretion of any trustee or trustees, or otherwise, and to such other powers, provisoes, restrictions, declarations, and limitations for the benefit of such child or children, or some or one of them, as the said A. B. shall, in manner aforesaid,

—with an annual sum by way of interest on the same for maintenance, &c.;

direct and appoint or declare; AND by the same or any other deed or deeds, writing or writings, to be executed and attested as last hereinbefore is prescribed, or by will or codicil as aforesaid, (but subject and without prejudice as aforesaid), to charge the premises intended to be charged with such portion or portions respectively with the payment of any annual sum or sums of money, not exceeding the interest of the sum or sums of money so to be charged for a portion or portions, after the rate of —*l.* per cent. per annum, to be applied for the maintenance and education of the child or children for whom the portion or portions to be charged as aforesaid shall be intended, in the meantime

REAL ESTATE WITH USUAL CLAUSES.

until such portion or portions shall become payable, the said annual sum or sums of money for maintenance and education, to be free and clear of and from all taxes and deductions whatsoever, and to commence from such period or periods, and to be raised and paid in such proportions and at such times, and to be applied for the purposes aforesaid at the discretion of such person or persons, and in such manner, as the said C. D. shall in that behalf, in and by any such deed or writing, or will or codicil as aforesaid, direct or appoint; AND FOR securing or providing for the raising and payment of the sum or sums of money so to be charged for a portion or portions as aforesaid, and of the annual sum or sums so to be charged for maintenance and education as aforesaid, it shall be lawful for the said A. B., by the same or any other deed or deeds, or writing or writings so sealed and delivered and attested as aforesaid, or by such last will and testament in writing, or codicil or codicils, (but subject and without prejudice as aforesaid), to limit the hereditaments and premises so intended to be charged as aforesaid to any person or persons whomsoever, for any term or terms of years, upon any trusts, or by way of mortgage, with or without impeachment of waste, so that every term or estate so to be limited as lastly hereinbefore is mentioned shall be made to cease, (subject and without prejudice to any disposition or dispositions which may be made under the trusts to be declared thereof as aforesaid), or be redeemable on full payment of the principal sum or sums of money which the same shall be created or limited for securing, and lawful interest for the same, and also of all such yearly sum or sums, if any, as shall or may be charged under the aforesaid power for the maintenance and education of any such child or children as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B. to exercise the aforesaid power of charging with portions and with annual sums for maintenance and education, by charging, in favour of any child or children by any woman or women with whom he may intermarry, the whole or any part of the portion or portions, and annual sum or

—and to limit terms of years for securing the same.

Proviso explanatory of the right of the appointor to charge under the preceding power, in respect of the children of different subsequent marriages.

REAL ESTATE WITH USUAL CLAUSES.

sums for maintenance and education, which he is hereinbefore authorized to charge in exclusion of his child or children by any subsequent marriage; BUT it is hereby expressly declared, that such charge in favour of such child or children of any such woman or women exclusively, shall not preclude the said A. B. from exercising the same power at any subsequent time or times so as to charge the said hereditaments and premises, or any part thereof, with any sum or sums of money for the portion or portions of any child or children of him the said A. B. by an after-taken wife or wives, not exceeding, together with the portion or portions (if any) which shall become vested or payable under any prior charge or charges which shall have been made by him as aforesaid, the amount of the whole sum which he is hereinbefore authorized to charge, according to the number of his children by any woman or women with whom he may intermarry after the decease of the said C. D., and with any annual sum or sums for the maintenance and education of such child or children not exceeding the interest after the rate aforesaid of such portion or portions (*x*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B. during his life, and after his decease to and for the said I. K. and L. M., and the survivor of them, and the executors and administrators of such survivor, during the minority of any son of the said A. B. by the said C. D., who, under or by virtue of the limitations hereinbefore contained, shall for the time being be entitled to the actual possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof, by any indenture or indentures, to be sealed and delivered by him or them respectively in the presence of,

Power to grant mining leases.

Power to raise portions.

(*x*) The law concerning powers to raise portions will be found in 2 Sugd. Pow. chap. xv. sect. 3, 6th ed.; Chance on Powers, chap. xvi. sect. 3. See too ante, Vol. 1, art. "SETTLEMENTS."

REAL ESTATE WITH USUAL CLAUSES.

and to be attested by, two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any part of the mines, quarries, minerals, and substances, in, under, or upon the said manors and lands, or any of them, or any part thereof, either with or without any messuages, buildings, lands, or hereditaments convenient to be held or occupied with the same respectively, and either with or without the surface of any lands in or under which the same or any part thereof respectively shall lie, and whether the same have or have not been hitherto opened or worked, unto any person or persons, for any term or number of years not exceeding sixty years, to take effect in possession and not in reversion or by way of future interest, together with full and free liberty, license, power, and authority to search, seek, bore, dig, drive, sink for, discover, work, get, and raise the said mines, quarries, minerals, and substances, and for those purposes, from time to time (*y*) [to sink, drive, carry, and make pits, shafts, drifts, grooves, tunnels, soughs, levels, trenches, sluices, ways, gates, watergates, gutters, and other subterraneous works in and under the said lands and premises, and to erect, build, and construct such steam-engines, furnaces, engines, mills, or gins and other machineries, and to use, occupy, maintain, and amend the same in such manner as shall be necessary or expedient, and to use all or any other lawful ways and means, as well for the finding, discovering, winning, working, getting, and raising the said minerals and substances forth and out of the mines and quarries, as for draining, or discharging, or carrying away water, foul air, stythe, and stench from, forth, and out of the same, and with sufficient ground room, heap room, and pit room, for bringing to bank, stacking, depositing, laying, placing, smelting, calcining, working, and manufacturing the minerals and substances (including rubbish) which shall from time to time proceed from, or be won, raised, wrought, dug, or gotten out of the same mines and quarries, and also with full and sufficient way and pas-

(*y*) The words in brackets may be omitted without much impairing the efficiency of the power.

REAL ESTATE WITH USUAL CLAUSES.

sage to and for the lessee and lessees respectively, and his and their respective agents, servants, and workmen, from time to time during the continuance of the term or terms of years to be so granted or created, to take, lead, and carry away with horses, carts, waggons, wains, and carriages, all the minerals and substances to be wrought, won, or gotten forth or out of the said mines and quarries, and also full and free liberty, license, and authority to erect, build, cut, form, construct, set up, lay down, use, and occupy all such houses, hovels, sheds, lodges, buildings, or erections, engines, furnaces, forges, foundries, canals, railways or framed waggon ways, weighing machines, or other machinery, conveniences, devices, inventions, or works whatsoever, already in use or hereafter to be invented, as shall from time to time be necessary, or expedient, or convenient for the standing, lying, and placing of workmen, workhouses, work, and utensils, and for the working and carrying on of the works of the said mines and quarries respectively, and for taking, leading, and carrying away the said minerals and substances, and also from time to time to take and carry away all or any of the steam-engines or other engines, furnaces, forges, foundries, and other buildings and erections, railways, waggon ways, weighing machines, and other machinery, at his or their will and pleasure, and also to dig and get up stones, sods, peat, clay, and other substances convenient for making, building, or repairing such houses and other buildings as aforesaid, and generally] to do whatever shall be needful or requisite for, in, or about the winning, working, obtaining, getting, washing, cleansing, and smelting of the said minerals and substances, and for the manufacturing and carrying away the same, so as by such limitations or appointments by way of demise or lease there be respectively reserved and made payable, during the term or terms of years to be thereby respectively created, such yearly rent or rents, sum or sums of money, tolls, duties, royalties, and reservations by the acre or by the ton, or otherwise, as can, under the circumstances of the case, be reasonably had or gotten for the same, and so as such limitations or appointments by way of demise or lease as

REAL ESTATE WITH USUAL CLAUSES.

aforesaid be made without any fine, premium, or foregift for the same, and so as in every such limitation or appointment by way of demise or lease so to be made as aforesaid there be contained a condition or power of re-entry, or a power to make void or determine the same, in case the rent or rents, sum or sums of money, tolls, duties, royalties, or reservations thereby respectively reserved and made payable, shall be unpaid by the space of twenty-one days, or some other reasonable time to be therein specified, and so as the respective appointee or appointees, or lessee or lessees, do execute a counterpart of all such limitations or appointments by way of demise or lease, as shall be made to them respectively, and enter into such covenants and agreements as the person or persons making such limitations or appointments respectively shall deem expedient for working and managing the said mines, quarries, and works, and for rendering and paying the rent or rents, sum or sums of money, tolls, duties, royalties, and reservations thereby to be reserved and made payable (*z*): PROVIDED ALWAYS, and it is hereby expressly agreed and declared, [that it shall be lawful, in and by any such limitations or appointments by way of demise or lease, to reserve any sum of money as or by way of a forehand mine rent, of a usual or customary amount, to be payable at any one or more time or times in the first or any subsequent year or years of the term to be thereby granted, over and besides any other mine rents and

Proviso that in certain cases a forehand mine rent may be reserved.

(*z*) See the law with respect to leases of mines, stated supra, p. 137, n. (*i*). The power in the text has been in use for many years, and has met with high approbation from distinguished members of the profession; but its enormous length prevents it from ever being introduced into settlements, except by special instructions, or in cases where the estates to be settled are known to contain minerals, and are of such great extent, as to render the cost of the settlement of small moment. However, a shorter power, and one which would probably be found efficient, may be constructed, by leaving out both the words in brackets, indicated supra, n. (*y*), and also such part as is included in brackets of the next following proviso. No doubt, it is very desirable to have a specification of the most usual privileges and stipulations, but still a general power will probably enable the donee to grant a lease, with powers sufficiently extensive for the due working of the mines.

Power to grant mining leases.

REAL ESTATE WITH USUAL CLAUSES.

royalties, or other reservations to be thereby reserved or made, and to be payable at all events, whether any minerals or substances shall happen to have been previously gotten or raised out of the said mines thereby to be limited or appointed by way of demise or lease, or otherwise, and although the said other mine rents and royalties or reservations shall have been actually paid or satisfied for all minerals or other substances which may previously have been gotten and raised, and with a proviso and agreement, that, in case the appointee or appointees, lessee or lessees, or his or their executors, administrators, or assigns, shall have paid the said forehand mine rent so to be reserved as aforesaid, and shall likewise have paid, satisfied, and performed all and every other the yearly rents, royalties, reservations, payments, covenants, and agreements to be therein reserved, expressed, and contained on his and their part or behalf, then and in such case, such appointee or appointees, lessee or lessees, his or their executors, administrators, or assigns, shall, in the last year of the term to be thereby demised, be permitted and allowed to work, get, take, and carry away, to his or their own use, out of and from the mines to be thereby demised, without the payment of any mine rent whatsoever, so much and such quantity of minerals and substances, or either of them, thereby to be demised, as, according to the particular reservations of mine rent to be therein contained, would otherwise have afforded and yielded a mine rent equal in amount to the sum so to be reserved in the nature of a forehand mine rent, and either with or without a further stipulation or covenant, that if the mines thereby to be demised shall not hold out and suffice, so as to permit such appointee or appointees, or lessee or lessees, his or their executors, administrators, or assigns, in the last year of the term thereby to be demised, to be reimbursed the whole amount of such forehand mine rent, in the manner hereinbefore mentioned, Then the person or persons who, at the expiration of the term so thereby appointed or demised, shall be entitled to the immediate freehold of and in the premises so to be limited and appointed by way of demise or lease, shall, immediately

REAL ESTATE WITH USUAL CLAUSES.

after the expiration of such term, refund and repay to such appointee or appointees, or lessee or lessees, or his or their executors, administrators, or assigns, the sum which shall have been so reserved and paid as a forehand mine rent, or so much thereof as shall not have been refunded and satisfied to him or them, by the getting of minerals and substances in the last year of the said term, without the payment of mine rent in manner aforesaid, or any other agreements, covenants, or stipulations of a like nature: AND FURTHER, that it shall be lawful, in and by any such limitation or appointment by way of demise or lease, to reserve any annual sum of money by way of mine rent, AND ALSO in case it shall appear at the expiration of any year of the term so thereby granted, upon a calculation of the extent to which the working of the mines to be thereby demised shall then have actually proceeded, that the said mines shall have been worked or gotten (the extent of the working of the said several mines, if more than one, to be thereby granted, being computed upon any average to be agreed upon, and to be therein specified) out of or from any greater quantity or extent of the surface of any lands than such quantity or extent of land in the whole as shall be after a rate and proportion to be therein specified in superficial measure, for each and every year of the said term elapsed, previously to the time of making such calculation as aforesaid, Then and in every such case, (over and besides the yearly sum by way of mine rent to be reserved as aforesaid), an additional mine rent for each and every statute acre in superficial measure, and so in proportion for any less quantity than a statute acre of the surface of any lands out of or from which the said mines shall have been so worked or gotten as aforesaid, over and above such quantity or extent in the whole of the said lands as shall be after the rate and proportion so to be specified in superficial measure, for each and every year of the said term, previously to the time of making such calculation as aforesaid, the said additional mine rent to be payable upon such day in every year of the said term wherein such additional mine rent shall actually arise or accrue as shall be therein specified, with a proviso that when and so

REAL ESTATE WITH USUAL CLAUSES.

often as any additional mine rent shall have become due at the expiration of any year of the term to be thereby demised, in consequence of the said mines having been worked or gotten out of or from any surplus quantity of any lands exceeding the quantity to be in that behalf specified as aforesaid, for each and every year of the said term previously elapsed as aforesaid, and the same shall have been actually paid by the appointee or appointees, lessee or lessees, his or their executors, administrators, or assigns, in pursuance of the reservation aforesaid, Then, and thenceforth, and so often as the case shall arise, the surplus quantity of the said lands in respect of which such additional mine rent shall have so arisen and been actually paid as aforesaid, shall not in any future calculation to be made at the expiration of any subsequent year of the said term, for the purpose of ascertaining whether additional mine rent shall have again become due, be again brought into consideration, so as to render any further mine rent again payable for or in respect of the same: AND GENERALLY], that in and by any such limitations or appointments by way of demise or lease, there shall or may be reserved or contained any other reservations, covenants, agreements, provisoes, or stipulations whatsoever, which have been usual in leases heretofore granted of mines or quarries in the said counties of —— and ——, or either of them, by the said C. B. or his ancestors, or which shall or may be deemed necessary or expedient for providing for the due working and managing of any mines and quarries so to be limited or appointed by way of demise or lease, or any works belonging thereto:

Power to grant leases for twenty-one years.

PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B., during his life, and after his decease for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, during the minority of any son of the said A. B. by the said C. D., who shall, under or by virtue of the limitations hereinbefore contained, for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises

REAL ESTATE WITH USUAL CLAUSES.

hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof, from time to time or at any time, by any indenture or indentures, to be sealed and delivered by him or them respectively, in the presence of, and to be attested by, two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any part of the said hereditaments and premises, to any person or persons, for any term or number of years absolutely, not exceeding twenty-one years, to take effect in possession, and not in reversion or by way of future interest, so as there be reserved on every such limitation or appointment by way of demise or lease, the best or most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof, And so as there be contained in every such limitation or appointment by way of demise or lease, a condition of re-entry for nonpayment, within a reasonable time to be therein specified, of the rent or rents thereby to be respectively reserved, And so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof respectively, and do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved, And be not, by any clause or words therein contained, made dispunishable for waste, or exempted from punishment for committing waste, anything hereinbefore contained to the contrary thereof in anywise notwithstanding (*a*):

(*a*) With respect to the construction and exercise of powers of leasing, see 2 Sugd. Pow. ch. xvii.; Chance on Powers, ch. xvii.; and the following recent cases; *Duke of Bedford* v. *Marquis of Abercorn*, 1 My. & C. 312, as to what power of leasing may be inserted in a settlement of Irish estates under a stipulation that it shall contain usual powers; *Doe* d. *Harries* v. *Morse*, 2 C. & M. 247; *Doe* d. *Wythe* v. *Rutland*, 2 Mee. & W. 661; *S. C.* 5 Mee. & W. 688; *Doe* d. *Douglas* v. *Lock*, 2 Adol. & Ell. 705, as to the rent to be reserved, and the mode of reservation; see, too, on the same point, *Regina* v. *Weston*, 2 Lord Raym. 1197. Sir

Powers of leasing, construction and exercise of.

REAL ESTATE WITH USUAL CLAUSES.

Power to grant building and repairing leases.

PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B. during his life, and after his decease for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, during the minority of any son of the said A. B. by the said C. D., who, under or by virtue of the limitations hereinbefore contained, shall for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof, from time to time or at any time, by any indenture or indentures, to be sealed and delivered by him or them respectively in the presence of, and to be attested by, two or more credible witnesses, to limit or appoint, by way of demise or lease, any part or parts of the said hereditaments and premises to any person or persons who shall or may improve the same by erecting and building thereon any new house or houses, erections or buildings, or by rebuilding or repairing any of the messuages or tenements, erections or buildings whatsoever, which now are or stand, or hereafter shall be or stand, on the same hereditaments, or any part thereof, or by expending such sum or sums of money in the improvement thereof respectively as shall be thought adequate for the interest therein respectively to be departed with, for any term or number of years not exceeding ninety-nine years, to take effect in possession and not in reversion or by way of future interest,

---

Edward Sugden observes, (2 Sugd. Pow. 456), that it should never be stated generally that a clause of re-entry shall be contained in the lease, but that it should be expressly stated how many days the rent must be in arrear; and he says that twenty-one days is the usual period. This certainly seems a proper practice; but it is more usual to find leasing powers worded in this respect as the one in the text, and it has been decided that forty-two days is a reasonable time within the meaning of such a power. (*Doe* d. *Wythe* v. *Rutland*, 2 Mee. & W. 661).

It is very usual to except the mansion-house, park, and appurtenances out of the power of leasing.

REAL ESTATE WITH USUAL CLAUSES.

and so that on every such limitation or appointment by way of demise or lease there be reserved the best and most improved yearly rent or rents to be payable during the continuance of the term or estate, or terms or estates to be created thereby, and to be incident to the immediate reversion of the hereditaments so to be limited or appointed by way of demise or lease, that can be reasonably had gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof, and so as there be contained in every such limitation or appointment a condition of re-entry for nonpayment, within a reasonable time to be therein specified, of the rent or rents thereby respectively to be reserved, and so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof respectively, and do thereby covenant for the due payment of the rent or rents to be thereby respectively reserved (*b*): PROVIDED ALWAYS, and it is hereby agreed

Power to en-

(*b*) The principal cases relating to powers to grant building and repairing leases, are collected in 2 Chance on Powers, p. 345, Div. 2393 et seq. It should be observed, that the insertion in a settlement of the usual power to grant building leases, is not authorized by a stipulation in articles that the settlement shall contain all usual powers, provisoes, and clauses. (*Pearce* v. *Baron*, Jacob, 158).

Powers to grant building, rebuilding, and repairing leases.

A power to grant rebuilding leases does not authorize the grant of a repairing lease; for it is considered that rebuilding is a different thing from repairing; (*Doe* d. *Dymoke* v. *Withers*, 2 B. & Ad. 896; *Jones* d. *Cowper* v. *Verney*, Willes, 162); and a fortiori a power to grant building leases does not authorize the grant of repairing leases. The power in the text enables the grant of a lease for any of these purposes.

Power to grant building leases under special restrictions, and with special powers;

It is sometimes desirable that only a particular class of building and repairing leases should be granted, as in the following forms, where the powers for the building and the repairing leases are given separately. Commencing and concluding as in the form in the text the building lease is to be made

"unto any person or persons who shall improve the same by laying out and expending the sum of £——, at the least, in erecting or building, on some part of the land so to be limited or appointed, any dwelling-house or villa, with suitable offices and outbuildings thereto, or shall covenant and agree so to do within two years next after

REAL ESTATE WITH USUAL CLAUSES.

and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., or the survivor of them, or the executors or administra-

franchise copyholds.

---

the date of such limitation or appointment by way of demise or lease to be made as aforesaid, for any term or number of years not exceeding ninety-nine years, to take effect in possession and not in reversion or by way of future interest, but so that there shall not be comprised in any one such limitation or appointment by way of demise or lease more than forty acres of land for the dwelling-house or villa and a demesne or grounds to be attached thereto, and so as that on every such limitation or appointment by way of demise or lease, there be reserved the best and most improved yearly rent &c.;"

—and repairing leases of a similar nature.

and the repairing lease is to be granted of

"any part or parts of the said lands hereby granted and released, or expressed and intended so to be, which shall be situate in or within the precincts of any town or village, to any person or persons who shall improve the same by laying out and expending in erecting or building thereon, or on some part thereof, any new house or houses, erections or buildings, or in rebuilding or repairing any of the messuages, tenements, erections, or buildings which now are or hereafter shall be or stand on the same or any part thereof, any sum or sums of money not less in the whole than the sum of £—— for any one such house, erection, or building, with the offices and outbuildings thereto, or shall covenant and agree so to do within two years next after the date of the limitation or appointment by way of demise or lease, so to be made as aforesaid, for any term or number of years not to exceed ninety-nine years, to take effect in possession and not in reversion or by way of future interest, but so that there shall not be comprised in any one such lease as last aforesaid more than five acres of land, including the site of any house or houses, erections and buildings, which may be erected or built, or covenanted or agreed to be erected or built as aforesaid, and so that on every such

REAL ESTATE WITH USUAL CLAUSES.

tors of such survivor, at the request and by the direction in writing of the said A. B., during his life, and after his decease, of the proper authority of the same trustees or trustee during the minority of any son of the said A. B. by the said C. D., who, under the limitations hereinbefore contained, shall for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, from time to time to enfranchise any messuages, lands, or tenements, holden of any manor or manors which shall or may be liable to the uses and limitations hereinbefore contained at or for such price or prices, or consideration or considerations, in money as they the said I. K and L. M., or the survivor of them, or the executors or administrators of such survivor, shall think reasonable, and thereupon, by any deed or deeds to be sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, to limit and appoint unto or to the use of any person or persons, (being a copyhold or customary tenant, or copyhold or customary tenants, of any such messuages, lands, or tenements), and his or their heirs, or otherwise, as he or they shall direct, the freehold and inheritance of any such messuages, lands, or tenements (*c*), Together with all such common of pasture, common of turbary, rights, liberties, and privileges, to and upon all and every or any of the

---

limitation or appointment by way of d mise or lease there be reserved &c."

As to the quantity of land which may be contained in a building or repairing lease.

It will be observed that a question which has arisen (see *Cooper* v. *Denne*, 1 Bro. C. C. 80; *S. C.* 1 Ves. jun. 565; *Higgins* v. *Rosse*, 3 Bligh, 112) as to the extent of ground authorized to be included in a building or repairing lease is here met by an express direction; but, under the common power, the donee would probably be at liberty to exercise a fair discretion, according to the nature and situation of the property. It never can be meant that every yard of land demised must be actually built on, unless it be situated in a town.

(*c*) With regard to the nature and operation of a power of enfranchisement, see ante, Vol. 3, p. 435, n. (*b*), p. 437, n. (*c*).

REAL ESTATE WITH USUAL CLAUSES.

commons and waste grounds, parcel of any such manor or manors, as shall have been appendant or appurtenant to such messuages, lands, or tenements immediately before the enfranchisement thereof (*d*), and the person or persons taking under any such limitation and appointment, and his or their heirs or assigns, shall from thenceforth, according to the estate or estates which shall be limited and appointed to him or them respectively, have, hold, and enjoy the messuages, lands, or tenements which shall be so limited and appointed, with the appurtenances, discharged from all customary or copyhold tenures, and all manner of quit rents, chief rents, copyhold or customary rents, fines, heriots, and other customary payments, either annual or otherwise, which, by or according to the custom of the manor or manors of which the same shall have been previously holden, would from thenceforth have grown due to the lord or lords thereof in respect of such messuages, lands, or tenements, and also discharged from all the uses, trusts, powers, provisoes, and limitations hereinbefore declared, expressed, and contained, but subject, nevertheless, to such reservations, rents, or payments (if any) as may be reserved or made payable in consideration of such enfranchisement or enfranchisements, And shall hold and enjoy as freehold tenant or tenants all such common of pasture and commonable rights in and upon every or any of the commons or waste grounds, parcel of any manor or manors, as shall have been appendant or appurtenant to the said messuages, lands, or tenements immediately before the enfranchisement thereof: AND IT IS HEREBY also declared that the receipts of the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, shall be good and sufficient discharges to all and every person or persons who shall pay any sum or sums of money as the consideration for any such enfranchisement as aforesaid (*e*); AND IT IS HEREBY

—with authority to the trustees to give receipts for money paid;

—the annual

(*d*) See ante, Vol. 3, p. 278, n. (*d*), p. 437, n. (*d*).

Power to trustees to give receipts for mo-

(*e*) It would, perhaps, be better to insert here a full trustees' receipt clause, as in the power of sale and exchange, infra, p. 542, or to insert in

REAL ESTATE WITH USUAL CLAUSES.

also declared that such yearly rents or annual payments (if any) as by any such limitations and appointments as aforesaid may be reserved, shall, from time to time and at all times thereafter, be had, received, and taken by the person or persons who for the time being, by virtue of the uses and limitations hereinbefore contained, would have been entitled to the ancient accustomed payments in respect of the copyhold messuages, lands, or tenements so enfranchised, in case no such enfranchisement had been made; AND ALSO, that when any messuages, lands, or tenements shall be so enfranchised as aforesaid, all and every the sum and sums of money which shall arise by such enfranchisement, shall be laid out and invested, or applied and disposed of in such and the same manner, and under the same restrictions and regulations, and with the same powers in all respects as hereinafter is mentioned touching the money to arise from any sale or sales to be made of any of the hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, under the power in that behalf hereinafter contained: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, at the request and by the direction in writing of the said A. B. during his life, and after his death, of the proper authority of the same trustees or trustee during the minority of any son of the said A. B. by the said C. D., who for the time being, under the limitations hereinbefore contained, shall be entitled to the actual possession or to the receipt of the rents, issues, and profits of the said hereditaments hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, from time to time, by any writing or writings under their or his hands or hand, to grant licenses to any of the present or future copyhold or customary

payments (if any) reserved to go as the profits of the seignory;

—and the gross sums of money, when received, to be held on the same trusts as the money to arise from any sale under the power of sale.

Power to grant licenses to copyholders to demise and do other acts for improving their tenements.

---

the settlement a general trustees' receipt clause, embracing monies to be paid under any of the powers or trusts, or to include the monies paid for enfranchisement in the receipt clause of the power of sale and exchange.

ney paid on enfranchisements.

REAL ESTATE WITH USUAL CLAUSES.

tenants of the said manors or lordships, or any of them, thereby authorizing such tenants respectively to build on or otherwise improve all or any part of their respective copyhold tenements, and to make roads and streets in, upon, or through the same, or to annex the same or any part thereof to adjacent ground for the purpose of improvement; and also authorizing such tenants respectively, for the purpose of building on the sites thereof, or for any other improvement, to pull down any of the messuages or erections which now are, or at any time or times hereafter shall be, standing and being on their respective copyhold or customary tenements or any part thereof, And also authorizing such tenants respectively to demise all or any part or parts of their respective copyhold tenements for the purpose of building and improving for any term or number of years not exceeding ninety-nine years, commencing from the respective times of granting such licenses, or for any one or more of the purposes aforesaid; And also, with the consent of the copyhold tenant or tenants whose estate shall be subject to such license, to fix the sum which, during the term to be mentioned in such license, should be considered as the annual value for assessing the fines payable to the lord upon admission of any new tenant to any tenement which shall have been built on or improved, or for the building on and improving of which such license shall be or shall have been granted, so that the sum to be fixed shall not in any case be less than the best annual rent which might, at the date of such license, be reasonably obtained on a demise of the premises therein mentioned for a term of ninety-nine years, or for such shorter term as shall be expressed in any such license, without taking any fine, premium, or foregift for the making of such demise, and so that the sum so to be fixed shall not be considered as the annual value, according to which the fine is to be assessed for any greater number of years than the term of ninety-nine years, to commence from the date of such license, and so that no fine, premium, or foregift shall be taken for the making or granting such license, save and except the customary annual fine (if any) for every year of the term to

REAL ESTATE WITH USUAL CLAUSES.

be expressed in such license, and such fees as shall be usual or reasonable in that behalf, And so that upon the grant of such licenses there be saved and reserved to the lords of the said manors or lordships respectively, for the time being, all fines, heriots, rents, customs, and services, due and to grow due in respect of the tenements therein comprised (*f*): PROVIDED ALWAYS, that every such license, whether under the hands of the lords or lord, or stewards or steward of the said manors or lordships, shall be entered on the respective court rolls or court books of the said manors or lordships respectively: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, at any time or times during the life of the said A. B., at the request and by the direction of the said A. B., (to be testified by some writing sealed and delivered by him in the presence of, and attested by, two or more credible witnesses (*g*)), to dispose of and con-

Licenses to be entered on the court rolls.

Power of sale and exchange.

(*f*) The license of a lord of a manor to do an act not authorized by the custom of the manor, only operates as a waiver of the right of the lord and those claiming through him; and, therefore, if the lord have only a particular estate, his license determines with the determination of the estate. (1 Roll. Abr. 511, (*k*); *Munifas* v. *Baker*, 1 Keb. 25, 26; *Petty* v. *Evans*, 2 Brownl. 40; *S. C.* nom. *Pettis* v. *Debbans*, 6 Vin. Abr. Copyh. (I. d.); Gilb. Ten. 203, 299; *Awbry* v. *Kern*, 1 Vern. 472). Hence it is expedient to insert in settlements of manors such a power as is given in the text, of granting licenses to the copyholders to enable them to improve their tenements. It is to be observed, however, that a copyholder may, it seems, without license pull down ruinous buildings, and erect others, (4 Ves. 480), and pull down even without rebuilding, if the value of the tenement be not thereby diminished. (*Doe* d. *Grubb* v. *The Earl of Burlington*, 5 B. & Adol. 507).

Powers to grant licenses to copyholders to improve their tenements.

(*g*) It has been questioned, whether a power of sale and exchange not restrained to a life or lives in being at the date of the settlement, and twenty-one years afterwards, is valid to any extent. But it has now been decided, that such a power, *if exercised* during the life of the tenant for life, is valid. (*Boyce* v. *Hanning*, 2 Crom. & Jerv. 334; see, too, *Biddle* v. *Perkins*, 4 Sim. 135; *Powis* v. *Capron*, Id. 438). And a power of sale, which is to be exercised during the continuance of successive estates tail, is good. (*Waring* v. *Coventry*, 1 My. & K. 249; see, too, *Wood* v. *White*,

As to the limits within which the exercise of powers of sale and exchange should be restrained.

REAL ESTATE WITH USUAL CLAUSES.

vey, either by way of absolute sale or in exchange for or in lieu of other manors, lands, or hereditaments to be situate somewhere in England or Wales, all or any part of the hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in manors, lands, or hereditaments, as to them the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable, AND, UPON any such exchange as aforesaid, to give or receive any sum or sums of money for equality of exchange (*h*): AND IT IS HEREBY agreed and declared, that any such sale or sales as aforesaid may be made either by public auction or private contract, and that the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, shall have full power to make such stipulations or conditions, in any particulars of sale by which the said premises, or any part thereof, may be sold, or in any contract for the sale thereof,

Trustees may give or receive money for equality of exchange.

Trustees to have discretion as to the manner and conditions of sale.

---

2 Keen, 664). No question could arise as to the validity of the power in the text, as it is only to be exercised during the life of the tenant for life; but its exercise may be extended to the minority of any son of the marriage who shall be tenant in tail male, thus:—

"And also, for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, at their or his discretion, during the minority of any son of the said A. B. by the said C. D., who, under or by virtue of the limitations hereinbefore contained, shall for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, or any part thereof."

Donees of a power of exchange authorized to pay money for equality.

(*h*) This power is generally expressly given; but it is now understood to be necessarily incident to a power of exchange. (*Bartram* v. *Whitcote*, 6 Sim. 86).

REAL ESTATE WITH USUAL CLAUSES.

or of any part thereof, as to the title to be required by the purchaser or purchasers, or the evidence to be produced in support of the same, or otherwise, as the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, shall think fit, And shall also have power to buy in the same premises, or any part or parts thereof, at any sale or sales by auction, and to rescind, alter, or vary any contract or contracts which may be entered into for the sale thereof, whether upon a sale thereof by public auction or private contract, and to resell the premises which shall be so bought in, or as to which the contract or contracts shall be so rescinded, without being responsible for any loss which may be occasioned thereby (*i*): AND IT IS HEREBY agreed and declared, that, for the purpose of effectuating any such sale or exchange, it shall be lawful for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, (at such request, and by such direction, so testified as aforesaid), by any deed or deeds, writing or writings, sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited and declared, or to be limited and declared under the powers of jointuring and charging portions (*k*) hereinbefore contained, of or concerning the said premises, or any part or parts, parcel or parcels thereof, (but subject and without prejudice to any mortgage or mortgages or other disposition or dispositions which may have been made under any of the trusts of the terms of years hereinbefore limited, or under the trusts of any term or terms of years to be limited as hereinbefore is mentioned), and by the same or any other deed or deeds, writing or writings, to limit, declare, direct,

Power to revoke old and appoint new uses to effectuate a sale or exchange.

(*i*) With respect to the powers and duties of trustees for sale, see the notes ante, Vol. 3, pp. 290, 291; Id. p. 95, n. (*a*); Lewin on the Law of Trusts and Trustees, chap. xix.; 2 Sugd. Pow. chap. xviii.; Chance on Powers, chap. xviii.

Powers and duties of trustees for sale.

(*k*) Other powers of charging (if any) should also be specified.

REAL ESTATE WITH USUAL CLAUSES.

or appoint any use or uses, estate or estates, trust or trusts of the said premises, or any part or parts, parcel or parcels thereof, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such sale or exchange as aforesaid: AND ALSO, THAT, upon payment of the money arising by sale of the said premises, or any part thereof, or to be received for equality of exchange as aforesaid, or any part thereof, it shall be lawful for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, to sign and give receipts for the same, and that such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money therein respectively acknowledged or expressed to be received, And that such person or persons, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application thereof (*l*): AND IT IS HEREBY also agreed and declared, that when all or any part or parcel of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, shall be so sold for a valuable consideration in money, or any money shall be so received for equality of exchange as aforesaid, they the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, shall with all convenient speed lay out and invest the money to arise by such sale or sales, or to be so received for equality of exchange as aforesaid, in the purchase of other manors, lands, or hereditaments in fee-simple in possession, to be situate somewhere in England or Wales, of a clear and indefeasible estate of inheritance, or of lands of a leasehold or copyhold tenure convenient to be held therewith, or with the hereditaments hereinbefore settled, (yet, so as that during the life of the said A. B. every such purchase be

Power to give receipts for purchase or equality of exchange money.

Purchase and equality of exchange money to be laid out by the trustees in the purchase of lands;

(*l*) See ante, Vol. 3, p. 293, n. (*g*); 2 Sugd. Pow. 501; 2 Chance on Powers, 363.

REAL ESTATE WITH USUAL CLAUSES.

made with his consent, to be testified by some writing under his hand); AND, MOREOVER, that they the said I. K. and L. M., or the survivor of them, or the heirs, executors, or administrators of such survivor, do and shall settle and assure, or cause to be settled and assured, as well the manors, lands, or hereditaments so to be purchased, as the manors, lands, or hereditaments to be taken by them the said I. K. and L. M., or the survivor of them, his heirs, executors, or administrators, in exchange as hereinbefore is mentioned, To such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements, as are in and by these presents limited, expressed, and declared, or shall, under the same powers of jointuring and charging portions (*m*), have been limited, expressed, or declared of and concerning the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, (other than the said advowsons), or as near thereto as the deaths of parties and other intervening accidents will then admit of, but not so as to increase or multiply charges (*n*); AND SO THAT if any of the lands so to be purchased shall be held by lease or leases for years, the same shall not vest absolutely in any son of the said A. B., who shall not attain the age of twenty-one years, but on the decease of any such son being tenant in tail male under or by virtue of the limitation hereinbefore contained, shall go, devolve, and remain in the same manner as if they had been freeholds of inheritance, and had been settled accordingly (*o*): AND IT IS

—to be settled to the then subsisting uses &c. of the settlement;

—but so that leases for years shall not vest absolutely in a tenant in tail by purchase dying under twenty-one.

In settlement

(*m*) Other powers of charging (if any) should also be specified.

(*n*) This declaration is intended to prevent the persons entitled to the jointures and portions from being entitled to new jointures and portions of equal amount out of each newly purchased estate. It seems, however, to be superfluous.

Charges not to be multiplied.

(*o*) With respect to the method of settling leaseholds in quasi entail, so as to make them go along with entailed estates, see

Entail of leaseholds.

REAL ESTATE WITH USUAL CLAUSES.

HEREBY agreed and declared, that if any of the lands so to be purchased as aforesaid shall be held by lease or leases for lives or for years, proper provisions shall be inserted in the settlement to be made thereof as aforesaid for renewing the same from time to time as occasion shall require, And that the fines, fees, and expenses of such renewal shall from time to time be defrayed by and out of the premises so to be purchased, and of which such renewals are to be made respectively, so and in such manner that the several persons entitled under the trusts of these presents shall contribute to the expense of such renewals in the proportions in which, according to the rules of courts of equity they would be bound to contribute, in the absence of any provision in these presents as to the parties at whose expense such renewals are to be made (*p*): PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, by and out of the monies to arise from any such sale or sales, or to be received for equality of exchange as aforesaid, to pay any sum or sums of money which, upon any exchange to be made in exercise of the aforesaid power in that behalf, shall or may be payable for equality of exchange by the trustees or trustee for the time being acting in the exercise of the same power; And also, to raise any money which shall be agreed to be paid by the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, for equality of exchange, or which shall be required for the purposes of obtaining the renewal of any such lease as aforesaid, by mort-

of leaseholds (if any) proper provisions for renewal to be inserted.

Power to the trustees to apply purchase-money or money received for equality of exchange in payment for equality on other exchanges, and to raise money by mortgage for the same purpose, and for renewal of leases.

Harg. & Butl. Co. Litt. 20. a., n. (5); Id. 290. b., n. (1), XII.; see, too, the Precedents of Wills, infra, Vol. 5, and ante, Vol. 1, art. SETTLEMENTS.

As to the renewal of leases of settled leaseholds.

(*p*) With respect to the proper provisions for the renewal of the leases of settled leaseholds, see supra, p. 347, n. (*f*); and as to the manner of raising, and the apportionment of the expenses of such renewal, see supra, p. 350, n. (*g*); see, too, supra, p. 351, n. (*h*).

REAL ESTATE WITH USUAL CLAUSES.

gage of the hereditaments to be received in exchange, or taken by renewal as aforesaid, or of any other hereditaments for the time being subject to the subsisting uses or trusts of these presents, and to make all such appointments or assignments, and give all such receipts, and do all such other acts, as shall be necessary or expedient for the purpose of effectuating any such mortgage or mortgages; and no mortgagee advancing money upon any mortgage purporting to be made under this power, shall be bound to see that such money is wanted, or that no more than is wanted is raised: PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., and the survivor of them, and the executors and administrators of such survivor, upon the request of the said A. B. during his life, and after his decease at their or his own discretion, to apply any sum or sums of money to arise by any such sale or exchange as aforesaid, or any part thereof, in or towards paying off and discharging any mortgage or other charge or incumbrance which shall or may affect all or any of the hereditaments which shall then be subject to the uses or trusts of these presents, anything hereinbefore contained to the contrary thereof in anywise notwithstanding, but without changing or altering the equities or obligations of the parties claiming under these presents, as to the defraying the expense of such renewals of leaseholds as aforesaid: AND IT IS HEREBY further agreed and declared between and by the parties to these presents, that until the money arising by such sale or sales as aforesaid, or to be received for equality of exchange as aforesaid, shall be disposed of in manner hereinbefore mentioned, it shall be lawful for the said I. K. and L. M., and the survivor of them, and the executors or administrators of such survivor, by and with the consent and approbation of the said A. B., in case he shall be then living, and if he shall be dead, then at the discretion of such trustees or trustee for the time being, to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds, or upon government or real securities in England or Wales, (but not in

Power to the trustees to apply monies received on a sale or exchange in discharge of incumbrances.

Power to the trustees to invest purchase and equality of exchange money till the same can be laid out in land, or applied for the other objects to which it is applicable.

REAL ESTATE WITH USUAL CLAUSES.

Ireland (*q*)), in the names or name of such trustees or trustee for the time being, and from time to time to alter, vary, transpose, and dispose of the said stocks, funds, and securities (*r*); AND IT IS HEREBY also agreed and declared, that the interest, dividends, and annual produce arising from such stocks, funds, and securities, shall go and be paid to such person or persons, and be applied to and for such intents and purposes, and in such manner, as the rents, issues, and profits of the hereditaments to be purchased therewith would go or be payable or applicable to, in case such purchase or purchases and settlement as aforesaid were then actually made (*s*): PROVIDED ALWAYS, and it is hereby agreed and declared, that, during the life of the said C. B., no sale or exchange shall be made of the said advowsons, or any of them, without the consent of him the said C. B., signified by some deed or writing under his hand and seal. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the hereinbefore-recited agreement in this behalf, and in consideration of the said intended marriage, he the said C. B., with the privity of the said A. B. and also of the said E. D. and C. D., (testified respectively as hereinbefore is mentioned), doth, for himself, his heirs, executors, and administrators, covenant with the said I. K. and L. M., their heirs and assigns, that in case

No sale to be made of the advowsons during the life of the husband's father without his consent.

Witnesseth further, covenant to surrender copyholds.

(*q*) See supra, p. 312, n. (*e*).

(*r*) See supra, p. 313, n. (*f*).

Law relating to powers of sale and exchange.

(*s*) With respect to the law affecting powers of sale and exchange, in addition to the observations contained in the preceding notes, see 2 Sugd. Pow. chap. xviii.; Chance on Powers, chap. xviii.; ante, Vol. 1, art. SETTLEMENTS. Articles for a settlement of Irish estates, to contain all provisions usually contained in settlements in England, have been recently held to authorize a power of sale and exchange, under which lands in England might be taken in exchange for lands in Ireland. *The Duke of Bedford* v. *The Marquis of Abercorn*, 1 My. & C. 312. As to the sale of a reversion before it falls into possession, under a power of sale and exchange in a settlement of the reversion, see *Clark* v. *Seymour*, 7 Sim. 67; and as to rendering an invalid sale valid by subsequent deeds, purporting to be made under the authority of a power of sale and exchange, see *Cowgill* v. *Lord Oxmantown*, 3 You. & Col. 369.

the said intended marriage shall be had and solemnized, he the said C. B. or his heirs shall and will, at the next or some subsequent court to be holden in and for the manor of ——, in the county of ——, at his or their own costs and charges, well and effectually surrender, or cause to be surrendered, into the hands of the lord or lady, lords or ladies of the same manor, or his, her, or their steward or lawful deputy, according to the custom thereof, ALL THAT &c., [*copyhold parcels*], being the copyhold part of the hereditaments particularly mentioned and comprised in the said schedule hereunder written or hereunto annexed, TOGETHER WITH &c., [*general words*], TO THE USE of the said I. K. and L. M., their heirs and assigns, according to the custom of the same manor, and to be holden by and under the rents, fines, suits, and services therefore due and of right accustomed, But upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and agreements, as shall or may as nearly correspond with and be similar to the uses, trusts, intents and purposes, powers, provisoes, and agreements hereinbefore limited, declared, and contained of and concerning the several freehold hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, (other than the said advowsons), as the different natures and qualities of the same several estates, and the rules of law and equity, will admit of(*t*): PROVIDED ALWAYS, and it is here-

REAL ESTATE WITH USUAL CLAUSES.

Parcels.

To the use of the trustees, upon trusts to correspond with the uses of the freeholds.

Proviso, that in

(*t*) Settlements of copyholds may be made by surrendering them to uses, as in the case of the freeholds; but it is more usual and convenient to surrender them to trustees, upon trusts to correspond with the uses of the freeholds; for, by this course, all questions are avoided as to how far the nature of copyhold property admits of the creation therein of all the legal estates and powers created in the freeholds; and disputes as to the admittances and fines of the remainder-men are obviated.

Settlements of copyholds should be made by surrendering them upon trusts.

It may, however, be observed, that if the settlement of the copyholds be made by a surrender to uses, as the contingent estates cannot be destroyed by the act of the tenant for life, it is unnecessary to insert a limitation to trustees for their preservation; (Burton on Real Property, Art. 1281); and that it is sufficient that he who takes the first estate should

Effects of a settlement of copyhold to uses.

REAL ESTATE WITH USUAL CLAUSES.

and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., or the survivor of them, or the executors or administra-

franchise copyholds.

---

the date of such limitation or appointment by way of demise or lease to be made as aforesaid, for any term or number of years not exceeding ninety-nine years, to take effect in possession and not in reversion or by way of future interest, but so that there shall not be comprised in any one such limitation or appointment by way of demise or lease more than forty acres of land for the dwelling-house or villa and a demesne or grounds to be attached thereto, and so as that on every such limitation or appointment by way of demise or lease, there be reserved the best and most improved yearly rent &c.;"

—and repairing leases of a similar nature.

and the repairing lease is to be granted of

"any part or parts of the said lands hereby granted and released, or expressed and intended so to be, which shall be situate in or within the precincts of any town or village, to any person or persons who shall improve the same by laying out and expending in erecting or building thereon, or on some part thereof, any new house or houses, erections or buildings, or in rebuilding or repairing any of the messuages, tenements, erections, or buildings which now are or hereafter shall be or stand on the same or any part thereof, any sum or sums of money not less in the whole than the sum of £—— for any one such house, erection, or building, with the offices and outbuildings thereto, or shall covenant and agree so to do within two years next after the date of the limitation or appointment by way of demise or lease, so to be made as aforesaid, for any term or number of years not to exceed ninety-nine years, to take effect in possession and not in reversion or by way of future interest, but so that there shall not be comprised in any one such lease as last aforesaid more than five acres of land, including the site of any house or houses, erections and buildings, which may be erected or built, or covenanted or agreed to be erected or built as aforesaid, and so that on every such

REAL ESTATE WITH USUAL CLAUSES.

tors of such survivor, at the request and by the direction in writing of the said A. B., during his life, and after his decease, of the proper authority of the same trustees or trustee during the minority of any son of the said A. B. by the said C. D., who, under the limitations hereinbefore contained, shall for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, from time to time to enfranchise any messuages, lands, or tenements, holden of any manor or manors which shall or may be liable to the uses and limitations hereinbefore contained at or for such price or prices, or consideration or considerations, in money as they the said I. K and L. M., or the survivor of them, or the executors or administrators of such survivor, shall think reasonable, and thereupon, by any deed or deeds to be sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, to limit and appoint unto or to the use of any person or persons, (being a copyhold or customary tenant, or copyhold or customary tenants, of any such messuages, lands, or tenements), and his or their heirs, or otherwise, as he or they shall direct, the freehold and inheritance of any such messuages, lands, or tenements (*c*), Together with all such common of pasture, common of turbary, rights, liberties, and privileges, to and upon all and every or any of the

---

limitation or appointment by way of d mise or lease there be reserved &c."

As to the quantity of land which may be contained in a building or repairing lease.

It will be observed that a question which has arisen (see *Cooper* v. *Denne*, 1 Bro. C. C. 80; *S. C.* 1 Ves. jun. 565; *Higgins* v. *Rosse*, 3 Bligh, 112) as to the extent of ground authorized to be included in a building or repairing lease is here met by an express direction; but, under the common power, the donee would probably be at liberty to exercise a fair discretion, according to the nature and situation of the property. It never can be meant that every yard of land demised must be actually built on, unless it be situated in a town.

(*c*) With regard to the nature and operation of a power of enfranchisement, see ante, Vol. 3, p. 435, n. (*b*), p. 437, n. (*c*).

REAL ESTATE WITH USUAL CLAUSES.

commons and waste grounds, parcel of any such manor or manors, as shall have been appendant or appurtenant to such messuages, lands, or tenements immediately before the enfranchisement thereof (*d*), and the person or persons taking under any such limitation and appointment, and his or their heirs or assigns, shall from thenceforth, according to the estate or estates which shall be limited and appointed to him or them respectively, have, hold, and enjoy the messuages, lands, or tenements which shall be so limited and appointed, with the appurtenances, discharged from all customary or copyhold tenures, and all manner of quit rents, chief rents, copyhold or customary rents, fines, heriots, and other customary payments, either annual or otherwise, which, by or according to the custom of the manor or manors of which the same shall have been previously holden, would from thenceforth have grown due to the lord or lords thereof in respect of such messuages, lands, or tenements, and also discharged from all the uses, trusts, powers, provisoes, and limitations hereinbefore declared, expressed, and contained, but subject, nevertheless, to such reservations, rents, or payments (if any) as may be reserved or made payable in consideration of such enfranchisement or enfranchisements, And shall hold and enjoy as freehold tenant or tenants all such common of pasture and commonable rights in and upon every or any of the commons or waste grounds, parcel of any manor or manors, as shall have been appendant or appurtenant to the said messuages, lands, or tenements immediately before the enfranchisement thereof: AND IT IS HEREBY also declared that the receipts of the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, shall be good and sufficient discharges to all and every person or persons who shall pay any sum or sums of money as the consideration for any such enfranchisement as aforesaid (*e*); AND IT IS HEREBY

—with authority to the trustees to give receipts for money paid;

—the annual

(*d*) See ante, Vol. 3, p. 278, n. (*d*), p. 437, n. (*d*).

Power to trustees to give receipts for mo-

(*e*) It would, perhaps, be better to insert here a full trustees' receipt clause, as in the power of sale and exchange, infra, p. 542, or to insert in

REAL ESTATE WITH USUAL CLAUSES.

also declared that such yearly rents or annual payments (if any) as by any such limitations and appointments as aforesaid may be reserved, shall, from time to time and at all times thereafter, be had, received, and taken by the person or persons who for the time being, by virtue of the uses and limitations hereinbefore contained, would have been entitled to the ancient accustomed payments in respect of the copyhold messuages, lands, or tenements so enfranchised, in case no such enfranchisement had been made; AND ALSO, that when any messuages, lands, or tenements shall be so enfranchised as aforesaid, all and every the sum and sums of money which shall arise by such enfranchisement, shall be laid out and invested, or applied and disposed of in such and the same manner, and under the same restrictions and regulations, and with the same powers in all respects as hereinafter is mentioned touching the money to arise from any sale or sales to be made of any of the hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, under the power in that behalf hereinafter contained: PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said I. K. and L. M., or the survivor of them, or the executors or administrators of such survivor, at the request and by the direction in writing of the said A. B. during his life, and after his death, of the proper authority of the same trustees or trustee during the minority of any son of the said A. B. by the said C. D., who for the time being, under the limitations hereinbefore contained, shall be entitled to the actual possession or to the receipt of the rents, issues, and profits of the said hereditaments hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be, from time to time, by any writing or writings under their or his hands or hand, to grant licenses to any of the present or future copyhold or customary

payments (if any) reserved to go as the profits of the seignory;

—and the gross sums of money, when received, to be held on the same trusts as the money to arise from any sale under the power of sale.

Power to grant licenses to copyholders to demise and do other acts for improving their tenements.

---

the settlement a general trustees' receipt clause, embracing monies to be paid under any of the powers or trusts, or to include the monies paid for enfranchisement in the receipt clause of the power of sale and exchange.

ney paid on enfranchisements.

REAL ESTATE WITH USUAL CLAUSES.

trustees to retain and reimburse themselves their expenses.

be lawful for them the said trustees in these presents named, and such future trustee or trustees to be appointed as aforesaid, and every or any of them, their and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively, and also to allow to his and their co-trustee and co-trustees all costs, charges, damages, and expenses which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto in or about the execution of the aforesaid trusts, or in relation thereunto (*y*): AND THE SAID C. B. and A. B., so far as relates to the said hereditaments and premises hereinbefore directed, limited, and appointed, or expressed and intended so to be, and the power and right to direct, limit, and appoint the same, and the quiet enjoyment, freedom from incumbrance, and further assurance thereof, do, for themselves, their heirs, executors, and administrators, and each of them doth, for himself, his heirs, executors, and administrators; AND THE SAID C. B., so far as relates to the hereditaments hereinbefore granted and released, or expressed and intended so to be, and the said copyhold hereditaments hereinbefore covenanted to be surrendered, and the title to and right to convey and surrender the same respectively, and the quiet enjoyment, freedom from incumbrances, and further assurance thereof respectively, doth for himself, his heirs, executors, and administrators, covenant with the said I. K. and L. M., their heirs and assigns, in manner following, (that is to say), THAT, for and notwithstanding any act, deed, matter, or thing by them the said C. B. and A. B., or either of them, or any of their or of either of their ancestors, made, done, committed, or executed, or knowingly or willingly suffered to the contrary, (except as hereinafter is mentioned), the powers or authorities hereinbefore exercised by them the said C. B. and A. B., or expressed and intended so to be, were well and effectually

Covenants by the husband and his father as to the premises, subject to the powers of appointment;

—and by the father alone as to the lands of which he is seised in fee;

—that the powers were well created, and are in force.

(*y*) As to the indemnity of trustees, and the payment of their expenses, see supra, p. 327, n. (*v*), p. 328, n. (*x*).

REAL ESTATE WITH USUAL CLAUSES.

created, and the same respectively at the time of the sealing and delivery of these presents are in full force and in no wise suspended, extinguished, weakened, or become void; AND THAT for and notwithstanding any such act, deed, matter, or thing whatsoever as aforesaid, (except as aforesaid), they the said C. B. and A. B. now have in themselves good right, full power, and lawful and absolute authority to direct, limit, and appoint the said hereditaments and premises hereinbefore directed, limited, and appointed, or expressed and intended so to be, to the uses and in manner aforesaid, according to the true intent and meaning of these presents; AND THAT for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said C. B., or any of his ancestors made, done, committed, or executed, or knowingly or willingly suffered to the contrary, he the said C. B., at the time of the sealing and delivery of these presents is lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to, the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, and every part thereof, for a good, sure, absolute, and indefeasible estate of inheritance in fee-simple in possession; AND of, in, or to the said hereditaments and premises hereinbefore covenanted to be surrendered, and every part thereof, for a good, sure, absolute, and indefeasible estate of inheritance to him and his heirs, according to the custom of the said manor of ——, and by and under the rents, fines, heriots, suits, and services, therefore due and of right accustomed, without any manner of condition, use, trust, property, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same estates, or either of them; AND THAT for and notwithstanding any act, deed, matter, or thing, as aforesaid, (except as aforesaid), he the said C. B. now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and confirm the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, unto the said I. K. and L. M., and their heirs, to the uses and in manner aforesaid, according to the

—and for right to appoint the premises appointed;

—that the husband's father is seised in fee-simple of the freeholds granted and released;

—and in customary fee of the copyholds covenanted to be surrendered;

—for right to grant and release the same freeholds;

REAL ESTATE WITH USUAL CLAUSES.

true intent and meaning of these presents; AND to surrender the said copyhold or customary hereditaments and premises to the use of the said I. K. and L. M., their heirs and assigns, upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents; AND THAT the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted, and released respectively, or expressed and intended so to be, and also the said hereditaments and premises hereinbefore covenanted to be surrendered, shall and may from time to time, and at all times hereafter, go and remain to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinbefore limited, expressed, and declared of and concerning the same respectively, and be peaceably and quietly entered into and upon, and be held, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, had received and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of or by them the said C. B. and A. B., or either of them, or their or either of their heirs or of or by any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for them or any of them, or by, from, or under any of their or of either of their ancestors; AND THAT free and clear and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said C. B. and A. B., or one of them, or their or one of their heirs, executors, or administrators, well and sufficiently saved, kept harmless, and indemnified of, from, and against all and all manner of former and other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said C. B. and A. B., or either of them, or their or either of their heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for them or any of them, or by, from, or under any of the ancestors of them the said C. B. and A. B., or of either of them: AND FURTHER, that they the said C. B.

—and surrender the copyholds;

—for quiet enjoyment;

—free from incumbrances;

—and for further assurance.

REAL ESTATE WITH USUAL CLAUSES.

and A. B., and each of them, and their respective heirs, and all and every other person or persons having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released, and covenanted to be surrendered respectively, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for them the said C. B. and A. B., or either of them, or their or either of their heirs, or by, from, or under any of the ancestors of them the said C. B. and A. B., or either of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose by the said I. K. and L. M., or the survivor of them, or the heirs, executors, or administrators of such survivor, or of any person or persons for the time being interested in the premises under or by virtue of these presents make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, things, devices, appointments, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely appointing and granting, conveying and assuring of the said hereditaments and premises hereinbefore directed, limited, and appointed, and granted and released respectively, or expressed and intended so to be and every part thereof to the uses and in manner aforesaid, and for surrendering the said copyhold hereditaments and premises, hereinbefore covenanted to be surrendered, upon the trusts and in manner aforesaid, as by the said I. K. and L. M., or the survivor of them, or the heirs of such survivor, or any of the parties interested in the premises under these presents, or their or any of their counsel in the law, shall be reasonably devised or advised and required. IN WITNESS &c.

SCHEDULE to which the above-written indenture refers.

XVII.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

SETTLEMENT *of* REVERSIONARY FREEHOLD *and* COPYHOLD *Property.* LIMITATIONS *to the* HUSBAND *and* WIFE SUCCESSIVELY *for* LIFE, *with Remainder to the* CHILDREN *as the* HUSBAND *and* WIFE *or the* SURVIVOR *shall* APPOINT, *and* IN DEFAULT *of Appointment, to the* CHILDREN *as* TENANTS IN COMMON IN TAIL, *with* CROSS REMAINDERS *between them in Tail* (*a*). USUAL POWERS *and* COVENANTS.

Parties.

THIS INDENTURE, made &c., BETWEEN N. D., of &c., [*the father of the intended wife*], of the first part; C. D., of &c., [*intended wife*], the only daughter of the said N. D., of the second part; A. B., of &c., [*intended husband*], of the third part; and E. F., of &c., G. H., of &c., and I. K., of &c., [*trustees*], of the fourth part: [*Recital of a settlement on the marriage of the wife's father and mother, and of a deed poll executed in pursuance of a power in that settlement, under which the wife is entitled to the reversion in fee expectant on the determination of the prior life estates in freeholds, and to a corresponding equitable estate in copyholds, the legal estate in which is vested in her father—and of the agreement for the marriage, see supra, p.* 309]; AND WHEREAS upon the treaty for the said intended marriage, it was (among other things), agreed, that the reversion in fee-simple of her the said C. D., of and in the said freehold and charterhold hereditaments comprised in the hereinbefore recited indenture of release and settlement, (subject and without prejudice, as in the said deed poll is in that behalf expressed and provided), should

Recitals, shewing the wife's estate.

Recital of the agreement for settlement as to the freeholds;

(*a*) It is extremely inexpedient to settle real estate in this manner. (See supra, p. 341, n. (*a*)).

be settled and assured To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and declared of and concerning the same, AND THAT the said N. D. should surrender the reversion expectant on the respective deceases of him the said N. D. and the said P. D. his wife of and in the copyhold hereditaments comprised in the said indenture of release and settlement, to the use of the said E. F., G. H., and I. K., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and expressed, or referred to, of or concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, she the said C. D., with the privity and approbation of the said A. B., (testified by his being a party to and sealing and delivering these presents (*b*)), hath granted and confirmed, and by these presents doth grant and confirm, unto the said E. F., G. H., and I. K., and to their heirs, ALL THAT the remainder or reversion in fee-simple of her the said C. D., expectant and to take effect in possession upon the determination of the said several uses or estates, by the said indenture of release and settlement limited, or expressed to be limited, for and during the respective lives of the said N. D. and P. D., and subject and without prejudice, as in the said deed poll is in that behalf expressed and provided, of and in all such and so many, and such part and parts of the said capital and other messuages, lands, tenements, and other hereditaments mentioned and comprised in the said indenture of release and settlement, as are or is freehold or charterhold (*c*), with their rights, easements, and appurtenances (*d*), AND ALL THE ESTATE, &c.:

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

—and the copyholds.

Witnesseth, conveyance of the freeholds.

Habendum to the releasees.

(*b*) See supra, p. 310, n. (*d*).

(*c*) See ante, Vol. 3, p. 354, n. (*e*).

(*d*) The estate conveyed being a remainder or reversion, lies in grant; and, therefore, no lease for a year is needed. Hence, too, the parcels are conveniently described in the recital. (See ante, Vol. 3, p. 209,

Form of conveyance of a reversion or remainder.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

To HAVE AND TO HOLD the said remainder or reversion in fee-simple expectant, and to take effect in possession as aforesaid, and subject and without prejudice as aforesaid, and all and singular other the premises hereinbefore granted, or expressed and intended so to be, unto the said E. F., G. H., and I. K., and their heirs, To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and declared of and concerning the same, (that is to say), To THE USE of the said C. D., her heirs and assigns, until the said intended marriage shall be had and solemnized; AND FROM and after the solemnization thereof, To THE USE of the said A. B. and his assigns during his life, without impeachment of waste; AND FROM and after the determination of that estate by forfeiture or otherwise, in the lifetime of the said A. B., To THE USE of the said E. F., G. H., and I. K., and their heirs, during the life of the said A. B., upon trust to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require, But, nevertheless, to permit and suffer the said A. B. and his assigns to receive and take the rents, issues, and profits of the said premises, for his and their own use during his life; AND FROM and immediately after the decease of the said A. B., To THE USE of the said C. D. and her assigns during her life, without impeachment of waste; AND FROM and after, &c.; [*remainder to the trustees to preserve during her life* (*e*)]; AND FROM and immediately after the

To the use of the wife until marriage;

—after marriage, to the use of the husband for life;

—remainder to trustees to preserve contingent remainders;

—remainder to the wife for life;

—and to trustees to preserve;

—remainder to

---

n. (*c*)). The present deed describes the property as a remainder or reversion, but it is very usual to convey the property by the ordinary description, as though it were in possession, and to indicate its reversionary nature only in the habendum, by stating the prior estates to which it is subject.

When successive life estates are limited, each should be

(*e*) When successive life estates are limited, each should be followed by a separate limitation to trustees, during the immediately preceding life, to preserve the contingent remainders. We sometimes find a series of life

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

decease of the said C. D., To THE USE of all and every, or such one or more exclusively of the other or others, of the children and child of the said A. B., on the body of the said C. D. to be begotten, at such age, day, or time, or respective ages, days, or times, for such estate or estates, interest or interests, and, if more than one, in such shares and proportions, and with, under, and subject to such limitations and remainders over, and charged and chargeable with such sum or sums of money, either annual or in gross, being for the benefit of some one or more of the said children, and upon such conditions, with such restrictions, and in such manner as the said A. B. and C. D. shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of, and attested by, two or more credible witnesses, from time to time direct, limit, or appoint; AND IN DEFAULT of such joint direction, limitation, or appointment, and so far as no such joint direction, limitation, or appointment shall extend, then as the survivor of them the said A. B. and C. D. shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him or her sealed and delivered in the presence of, and attested by, two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, from time to time direct, limit, or appoint; AND IN DEFAULT of such direction, limitation, or appointment, and so far as no such direction, limitation, or appointment shall extend, To THE USE of all and every the children and child of the said A. B., on the body of the said C. D. to be begotten, and the heirs of their respective bodies issuing, to be divided between or amongst the said children, if more than one, in equal shares as

the children of the marriage, as the husband and wife shall appoint;

—and in default of such joint appointment, as the survivor shall appoint;

—and in default of any appointment, to all the children equally as tenants in common in tail;

---

estates, with only one limitation to trustees to preserve, following the last of the life estates, and expressed to be for the purpose of preserving contingent remainders during all the preceding estates; but this is a very confused and inaccurate mode of limitation. As to the estate of the trustees to preserve contingent remainders, see supra, p. 502, n. (*g*).

followed by a limitation to trustees.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

tenants in common; AND if any one or more of the said children shall die without issue of his, her, or their body or respective bodies, then as well as to the original share or shares of the child or children so dying, and of whom there shall be such failure of issue as hereinbefore is mentioned, as to the share or shares which shall have survived or accrued to any such child or children, or to the heirs of his, her, or their body or respective bodies, To THE USE of the other or others of the children of the said A. B. by the said C. D., and the heirs of their respective bodies issuing, and to be divided between or amongst the last-mentioned children, if more than one, in equal shares, as tenants in common; AND if all the children of the said A. B. by the said C. D., but one, shall die without issue, or there shall be but one such child, then as to the entirety of and in the said hereditaments and premises, To THE USE of such one or such only child, and the heirs of his or her body issuing; AND FOR DEFAULT of such issue, To THE USE of the said C. D., her heirs and assigns for ever (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B. and C. D., as and when, under and by virtue of the limitations hereinbefore contained, they shall successively and respectively be in the actual possession of, or be entitled to, the receipt of the rents, issues, and profits of the said hereditaments, the reversion whereof is hereby granted, or expressed and intended so to be, during their respective lives; AND

—with cross remainders between them as tenants in common in tail;

—with remainder to the wife in fee.

Power of leasing.

Mode of settlement of real estate among all the children of a marriage.

(*f*) When parties insist on having real estate settled as real estate for the benefit of all the children, (see supra, p. 341, n. (*a*)), it should be limited (subject to the powers of appointment) to the use of all the children in tail, with cross remainders between them in tail. Now that estates tail can be barred by an enrolled deed, there is no objection to their creation; and this mode of limitation is so much more simple and convenient than that of limiting estates in fee-simple, that the latter should never be permitted. In limiting real estate to children, they must be made to take vested estates at birth; for if the vesting be postponed to twenty-one or marriage, and the prior estates determine before all the children attain twenty-one or marry, the estates which then remain contingent will fail.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

ALSO to and for the said E. F., G. H., and I. K., and the survivors or survivor of them, and the executors or administrators of such survivor, from time to time and at all times during the minority of any child or children, who under and by virtue of the limitations aforesaid shall be entitled to any estate of freehold or inheritance of and in the same hereditaments, or of or in any undivided part or share thereof, by any indenture or indentures, &c.; [*Power of leasing for twenty-one years, supra, p.* 531 (*g*)]: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, at the request and by the direction of the said A. B. and C. D., during their joint lives, and after the death of either of them, then at the request and by the direction of the survivor of them, testified by some writing under their, his, or her hands and seals, or hand and seal, attested by two or more credible witnesses, to dispose of and convey; [*Power of sale and exchange, supra, p.* 539]: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the parties to these presents, that nothing herein contained shall in anywise prejudice or affect the powers of leasing and of sale respectively contained in the hereinbefore recited indenture of release and settlement, or either of them, And that the uses and estates limited or created by this present indenture, shall and may from time to time be overreached by any exercise of the said powers of leasing and of sale, or either of them, in such and the same manner as if the same uses and estates had been limited or created in and by the said indenture of release and settlement, And that the lands or hereditaments to be purchased with the monies to arise by any sale or sales to be made under any exercise of the said last-mentioned power of sale, shall be settled and assured to the uses, upon and for the trusts,

Power of sale and exchange.

Proviso that the powers in the existing settlement shall overreach the uses of this settlement.

(*g*) The powers of granting mining and building leases, and the other powers given in the last precedent, may be adapted to this settlement in the same way as the powers in the text.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, which shall for the time being be subsisting or capable of taking effect underor by virtue of the said indenture of release and settlement, and this present indenture, and the interest, dividends, or annual produce of any stocks, funds, or securities in or upon which the same monies shall or may be laid out or invested, shall be paid or applied accordingly (*h*).

Witnesseth further, covenant to surrender copyholds;

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, the said N. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their heirs and assigns, that in case the said intended marriage shall be solemnized, he the said N. D. or his heirs shall and will, at the next or some subsequent court or courts to be holden in and for the manor or manors of which the copyhold hereditaments hereinafter mentioned are respectively holden, at his or their own costs and charges, well and effectually surrender, or cause to be surrendered, into the hands of the lord or lady, lords or ladies of the same manor or manors respectively, according

—the parcels being mixed with the freeholds.

to the custom or customs thereof, ALL such and so many, and such part or parts of the said messuages, lands, tenements, hereditaments, and premises mentioned and comprised in the said indenture of release and settlement, as are or is of copyhold tenure (*i*), with their rights, easements, and appurtenances,

To the use of the trustees, subject to the preceding estates.

To THE USE of the said E. F., G. H., and I. K., their heirs and assigns, from and after the respective deaths of him the said N. D. and the said P. D., according to the custom or customs of the

---

The powers of a prior settlement may be kept on foot on a new settlement of the same estate.

(*h*) With respect to the reason for inserting this proviso, see 1 Sugd. Pow. 74; *Roper* v. *Halifax*, 2 Sugd. Pow. 549; *S. C.* 8 Taunt. 845; *Lord Jersey* v. *Deane*, 5 B. & Ald. 569; see, too, *Doe* d. *Lumley* v. *The Earl of Scarborough*, 3 Adol. & Ell. 2; *The Earl of Scarborough* v. *Doe* d. *Saville*, 3 Adol. & Ell. 898. In the present case, however, the estate for life under the original settlement is not conveyed; the new settlement is of the reversion alone.

(*i*) See ante, Vol. 3, p. 354, n. (*e*).

said manor or manors respectively, And to be holden by and under the rents, fines, suits, and services therefore due and of right accustomed, BUT upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and agreements, as shall or may as nearly correspond with and be similar to the uses, trusts, intents and purposes, powers, provisoes, and agreements, to, upon, for, with, under, and subject to which the said freehold hereditaments comprised in the said indenture of release and settlement are or shall stand limited and settled under or by virtue of the said indenture of release and settlement, and this present indenture, as the different natures and qualities of the same several estates, and the rules of law and equity, will permit (*k*): AND THE SAID N. D., so far as relates to his own acts and deeds, and the acts and deeds of his ancestors, heirs, executors, and administrators, and of all and every the persons claiming by, from, under, or in trust for him, them, or any of them, doth hereby, for himself, his heirs, executors, and administrators; AND THE SAID C. D., so far as relates to her own acts and deeds, and the acts and deeds of her heirs, executors, and administrators, and of all and every the person and persons claiming by, from, under, or in trust for her, them, or any of them, doth hereby, for herself, her heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their heirs and assigns, by these presents in manner following, (that is to say), THAT for and notwithstanding any act, deed, matter, or thing, by them the said N. D. and C. D., or either of them, or any of the ancestors of the said N. D., made, done, &c.; [*Covenants for right—by C. D. to convey the freehold, supra, p. 553; and for N. D. to surrender the copyholds, Ib.—for quiet enjoyment, supra, p. 554—free from incumbrances, Ib.—and for further assurance, Ib.*]. IN WITNESS &c.

OF REAL ESTATE EQUALLY AMONG THE CHILDREN.

Upon trusts to correspond with the uses declared of the freeholds.

Covenants for title by the wife's father;

—and the wife.

(*k*) See supra, p. 547, n. (*t*).

XVIII.

UNDER POWERS OF JOINTURNIG AND CHARGING PORTIONS.

SETTLEMENT *made in* PURSUANCE *of* POWERS *of* JOINTURING *and* CHARGING PORTIONS *given to a* TENANT *for* LIFE. DEMISE *of the* LIFE ESTATE *to secure an Annuity as* PIN-MONEY *for the Wife.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; E. F., of &c., and G. H., of &c., [*trustees of the pin-money term*], of the third part; I. K., of &c., and L. M., of &c., [*trustees of the jointure term*], of the fourth part; and N. O., of &c., and P. Q., of &c., [*trustees of the portions term*], of the fifth part: [*Recital of the settlement containing the power—the limitations being recited down to and including the life estate of the intended husband, (see ante, Vol. 3, p. 222, n. (c)), and the powers of jointuring and charging portions being set forth at length; Recital of the subsequent events so as to shew that A. B. is tenant for life in possession; and of the agreement for the marriage, supra, p. 309*]: AND WHEREAS, on the treaty for the said intended marriage it was agreed that the said A. B. should, in manner hereinafter mentioned, secure the annual sum of £——, from and after the solemnization of the said intended marriage, for the separate use of the said C. D. by way of pin-money during the joint lives of them the said A. B. and C. D.; AND upon the said treaty it was also agreed that the said A. B. should exercise, in manner hereinafter mentioned, the powers of limiting a rent-charge by way of jointure and of charging portions for younger children, so by the said indenture of the —— day of —— [*the original settlement*] given or limited to him the said A. B., as hereinbefore is mentioned (*a*). NOW THIS INDENTURE WITNESS-

Recital of a settlement giving powers of jointuring and charging portions to a tenant for life;

—of the agreement for the present settlement.

Witnesseth, de-

(*a*) In well-drawn settlements the powers of jointuring and charging portions are made exercisable either before or after the marriage of the

Variation in case of a settle-

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

ETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, and in consideration of the sum of ten shillings to the said A. B. paid by the said E. F. and G. H., at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), he the said A. B. hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell, and demise (*b*), unto the

mise of the life estate.

---

donee. In the precedent in the text the powers are exercised before marriage, but no very material alteration will be necessary when they are to be exercised after marriage. The introductory recital in such case may be as follows :—

ment made under powers and after a marriage.

" AND WHEREAS, in consideration of the natural love and affection which he the said A. B. bears for the said C. D. his wife, and for divers other good causes and considerations, the said A. B. is desirous of exercising in manner hereinafter mentioned the said power of jointuring by the said indenture of release and settlement limited to him, as hereinbefore is mentioned; AND in consideration of the natural love and affection which he the said A. B. bears for his children now living or hereafter to be born, and for divers other good causes and considerations, he the said A. B. is desirous of exercising, in manner hereinafter mentioned, (but subject to such power of revocation as is hereinafter contained), the said powers by the said indenture of release and settlement limited to the said A. B., of charging with portions for his child and children other than and except an eldest or only son so entitled as aforesaid."

The several witnessing parts will express the exercise of the respective powers to be for " effectuating the said desire in this behalf," and the considerations will be natural love and affection for the wife or children, (as the case may be), stated as in the recital, and " divers other good causes and considerations." The reasons assigned for introducing the general statement of " divers good causes and considerations " are, that these words let in the averment of other considerations not appearing on the deed, and that they deter purchasers and mortgagees from dealing with the feoffor on the assumption that the settlement is voluntary within the statute, 27 Eliz. c. 4.

Use of the words " divers good causes and considerations."

(*b*) As to the insertion of a nominal consideration in a bargain and sale for years, see ante, Vol. 3, p. 579, n. (*e*).

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

said E. F. and G. H., their executors, administrators, and assigns, ALL &c., [*parcels—general words*]: TO HAVE AND TO HOLD the said manors or lordships and hereditaments, and all and singular other the premises hereby granted and demised, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of ninety-nine years, to commence and be computed from the solemnization of the said intended marriage, and thenceforth next ensuing and fully to be complete and ended, if the said A. B. and C. D. shall both so long live, nevertheless UPON TRUST that the said E. F. and G. H., and the survivor &c., [*trust to raise an annual sum by way of pin-money, and pay the same to the wife for her separate use, with an ultimate trust for the reversioner, supra, p. 506 et seq.*] AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, and pursuant to, and by force and virtue, and in exercise and execution of, the power or authority to the said A. B. for this purpose, by the said indenture of the —— day of ——, [*the original settlement*], given or limited, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he the said A. B. doth, by this deed or writing, sealed and delivered by him in the presence of, and attested by, the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said A. B. (*c*), grant, limit, and appoint, to and to the use of the said C. D., (in case the said marriage shall take effect, and she shall survive him the said A. B.), ONE ANNUAL SUM or yearly rent-charge of £——, to be issuing and payable out of, and charged and chargeable upon, ALL and singular the said hereditaments and premises hereinbefore granted, bargained, sold, and demised, or expressed and intended so to be (*d*): TO HAVE,

Habendum to trustees for a term of 99 years if both husband and wife so long live.

In trust to raise pin-money for the wife.

Witnesseth further, appointment in exercise of the power of jointuring;

—of a jointure rent-charge to the wife.

(*c*) As to the manner of exercising powers, see ante, Vol. 3, p. 211, n. (*e*), supra, p. 331, n. (*e*).

(*d*) If there be no prior demise the parcels had better be set out in the

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

HOLD, receive, and take the said annual sum or yearly rent-charge of £——, from the time of the death of the said A. B., unto the said C. D. and her assigns during her life, for her jointure, and in full satisfaction and bar of dower or freebench, &c., and to be paid, &c., and the first payment, &c., [*supra, pp.* 502, 503]; AND FURTHER, that when and so often &c., [*power of distress, supra, p.* 503]; AND FURTHER, that in case &c., [*power of entry, supra, p.* 504]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and for the better securing the due payment of the said annual sum or yearly rent-charge of £——, hereby limited and appointed unto the said C. D. and her assigns as aforesaid, and pursuant to &c., [*reference to power, ut supra*], he the said A. B. doth by this deed or writing, so sealed and delivered by him, and intended to be so attested as aforesaid, grant, limit, and appoint unto the said I. K. and L. M., their executors, administrators, and assigns, ALL and singular the said hereditaments and premises hereinbefore charged with the payment of the said annual sum or yearly rent-charge of £——, or intended so to be: TO HAVE AND TO HOLD the said manors or lordships and hereditaments, and all and singular other the premises hereinbefore granted, limited, and appointed, or expressed and intended so to be, (subject to the said annual sum or yearly rent-charge of £——, and the powers and remedies hereinbefore limited for enforcing the payment thereof when in arrear), unto the said I. K. and L. M., their executors, administrators, and assigns, for the term of three hundred years, to commence and be computed from the decease of the said A. B., and thenceforth next ensuing and fully to be complete and ended, without impeachment of waste, upon the trusts and subject to the proviso hereinafter declared and contained of and concerning the same, (that is to say), IN TRUST, to permit the person or persons entitled for the time being to the said hereditaments and premises, in remainder or reversion,

Habendum accordingly;

—with powers of distress and entry.

Witnesseth further, appointment to trustees of the lands charged with the jointure.

Habendum for a term of years.

In trust for securing the jointure.

recital of the original settlement, and the reference be altered accordingly. Perhaps, too, this is the best method even when there is a demise of the life estate.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

immediately expectant upon the determination of the said term of three hundred years, to receive and take the rents, issues, and profits of all and singular the same hereditaments and premises, until default &c., [*Trust to secure the payment of the jointure rent-charge, supra, p.* 509.—*Proviso for cesser of the term, supra, p.* 510 (*e*)]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, and pursuant to &c., [*reference to the power, ut supra*], he the said A. B. doth by this deed or writing, so sealed and delivered by him, and intended to be so attested as aforesaid (*f*), subject and charge ALL and singular the said hereditaments and premises hereinbefore particularly mentioned, and granted, bargained, sold, and demised, and also charged, limited, and appointed, or expressed and intended so to be, and the rents, issues, and profits thereof, and of every part and parcel thereof, (but subject and without prejudice to the said annual sum or yearly rent-charge of £——, hereinbefore limited to the said C. D. and her assigns for her life as aforesaid, and the powers and remedies and term of years hereinbefore given or created for securing the payment thereof), WITH the raising and payment of the sum of £—— for the portion or portions of all and every the child or children of the said A. B. by the said C. D., (other than and except an eldest or only son), the same to be vested in, and to be payable to, such child and children respectively, at such age, day, or time, or respective ages, days, or times, and with such provision for the maintenance and education (*g*) of such children respectively, not exceeding the interest of their respective portions at the rate of —*l.* per cent. per annum, to commence and become payable after the decease of the

Witnesseth further, charge in pursuance of the power in that behalf;

—of a sum of money for the portions of the younger children of the settlor, and maintenance for the same as the settlor shall appoint.

(*e*) With respect to powers of jointuring, see the references supra, p. 521, n. (*w*). The proviso for cesser of the term is usually required by the terms of the power.

(*f*) This mode of reference can be used only when the powers of jointuring and charging portions are to be exercised with the same formalities. See ante, Vol. 3, p. 211, n. (*e*).

(*g*) It must be seen that the power authorizes a charge for maintenance. 2 Sugd. Pow. 304.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

said A. B., and with such clauses of survivorship and accruer, and with such provisions for their respective preferment and advancement in the world, or benefit out of their respective portions, previously to the vesting thereof respectively, as the said A. B., at any time or times during his life, by any writing or writings, with or without power of revocation, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, shall appoint: AND IN DEFAULT of, and subject to, such appointment, if there shall be but one child of the said A. B. by the said C. D., (other than and besides an eldest or only son), the said sum of £—— to be for the portion of such only child, and to be an interest vested in such only child, being a son, at his age of twenty-one years, or, being a daughter, at her age of twenty-one years or day of marriage, which shall first happen, and to be paid to him or her on or at the same age, day, or time, if the same shall happen after the decease of the said A. B., with interest for the same after the rate of —*l.* per cent. per annum from the decease of the said A. B., by way of maintenance, to be payable half-yearly, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the decease of the said A. B., and a proportional payment of interest to be made for any less time than half a year; but if the same shall happen in the lifetime of the said A. B., then immediately after his decease; AND in case there shall be two or more children of the said intended marriage, (other than or besides an eldest or only son), then the sum of £—— to be for the portions of such two or more children, and to be divided between or amongst them in equal shares and proportions, the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid to him, her, or

Gift in default of appointment, if there be but one younger child;

—if two or more such children.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

immediately expectant upon the determination of the said term of three hundred years, to receive and take the rents, issues, and profits of all and singular the same hereditaments and premises, until default &c., [*Trust to secure the payment of the jointure rent-charge, supra, p. 509.—Proviso for cesser of the term, supra, p. 510 (e)*]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, and pursuant to &c., [*reference to the power, ut supra*], he the said A. B. doth by this deed or writing, so sealed and delivered by him, and intended to be so attested as aforesaid (*f*), subject and charge ALL and singular the said hereditaments and premises hereinbefore particularly mentioned, and granted, bargained, sold, and demised, and also charged, limited, and appointed, or expressed and intended so to be, and the rents, issues, and profits thereof, and of every part and parcel thereof, (but subject and without prejudice to the said annual sum or yearly rent-charge of £——, hereinbefore limited to the said C. D. and her assigns for her life as aforesaid, and the powers and remedies and term of years hereinbefore given or created for securing the payment thereof), WITH the raising and payment of the sum of £—— for the portion or portions of all and every the child or children of the said A. B. by the said C. D., (other than and except an eldest or only son), the same to be vested in, and to be payable to, such child and children respectively, at such age, day, or time, or respective ages, days, or times, and with such provision for the maintenance and education (*g*) of such children respectively, not exceeding the interest of their respective portions at the rate of —*l.* per cent. per annum, to commence and become payable after the decease of the

Witnesseth further, charge in pursuance of the power in that behalf;

—of a sum of money for the portions of the younger children of the settlor, and maintenance for the same as the settlor shall appoint.

(*e*) With respect to powers of jointuring, see the references supra, p. 521, n. (*w*). The proviso for cesser of the term is usually required by the terms of the power.

(*f*) This mode of reference can be used only when the powers of jointuring and charging portions are to be exercised with the same formalities. See ante, Vol. 3, p. 211, n. (*e*).

(*g*) It must be seen that the power authorizes a charge for maintenance. 2 Sugd. Pow. 304.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

said A. B., and with such clauses of survivorship and accruer, and with such provisions for their respective preferment and advancement in the world, or benefit out of their respective portions, previously to the vesting thereof respectively, as the said A. B., at any time or times during his life, by any writing or writings, with or without power of revocation, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, shall appoint: AND IN DEFAULT of, and subject to, such appointment, if there shall be but one child of the said A. B. by the said C. D., (other than and besides an eldest or only son), the said sum of £—— to be for the portion of such only child, and to be an interest vested in such only child, being a son, at his age of twenty-one years, or, being a daughter, at her age of twenty-one years or day of marriage, which shall first happen, and to be paid to him or her on or at the same age, day, or time, if the same shall happen after the decease of the said A. B., with interest for the same after the rate of —*l.* per cent. per annum from the decease of the said A. B., by way of maintenance, to be payable half-yearly, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the decease of the said A. B., and a proportional payment of interest to be made for any less time than half a year; but if the same shall happen in the lifetime of the said A. B., then immediately after his decease; AND in case there shall be two or more children of the said intended marriage, (other than or besides an eldest or only son), then the sum of £—— to be for the portions of such two or more children, and to be divided between or amongst them in equal shares and proportions, the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid to him, her, or

Gift in default of appointment, if there be but one younger child;

—if two or more such children.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

them respectively, at the same ages, days, or times respectively, if the same respectively shall happen after the decease of the said A. B., with interest for the same respectively, after the rate aforesaid, from the decease of the said A. B., by way of maintenance, to be payable half-yearly, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the decease of the said A. B., and a proportional payment of interest to be made for any less time than half a year; but if the same respectively shall happen in the lifetime of the said A. B., then immediately after his decease: PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared between and by the parties to these presents, that, in default of any such direction or appointment as aforesaid by the said A. B. to the contrary, no child or children taking any part of the said sum of £——, under or by virtue of any direction or appointment to be made by the said A. B. in pursuance of the power or authority hereinbefore given or reserved to him for that purpose, shall be entitled to any further or other share of or in that part of the said sum of £——, of which no such direction or appointment shall have been made, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*h*): PROVIDED ALWAYS, that if any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, being a son or sons, shall, before he or they shall attain the age of twenty-one years, die or become an eldest or only son for the time being entitled, under the limitations mentioned in the said indenture of appointment and release, [*the original settlement*], to the said hereditaments and premises for an estate in tail male in possession or in remainder expectant upon such of the uses or estates limited or created by the same indenture, and which are precedent to the estates in tail male thereby limited to the first and other sons successively of the said A. B. as shall be then subsisting, or, being a daughter or daughters, shall depart this life under the age

Hotchpot clause.

Clause of survivorship and accruer.

(*h*) See supra, p. 319, n. (*k*).

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

of twenty-one years without being or having been married; THEN and in every such case, as well the share hereby originally provided for, as the share or shares by virtue of this present clause or proviso surviving or accruing to, each such son so dying or becoming an eldest or only son for the time being entitled as aforesaid, and each such daughter so dying as aforesaid, shall from time to time go, accrue, and belong to the survivors and survivor, or others or other of the said children, (not being an eldest or only son so for the time being entitled as aforesaid), and shall be equally divided between and among them, (if more than one), share and share alike, and, as far as circumstances will admit, shall become vested in and be paid to him, her, or them, at such age, day, or time, or respective ages, days, or times, and in such manner as is hereinbefore directed, provided, and declared concerning his, her, or their original share or shares of the said sum of £—— (*i*). AND THIS INDENTURE LASTLY WITNESSETH, that, in pursuance and further performance of the said agreement in this behalf, and for further and better securing and providing for the raising and paying of the said sum of £——, hereby charged on the said hereditaments and premises, for portions as aforesaid, and such interest, by way of maintenance as aforesaid, and pursuant to &c., [*reference to power, ut supra*], he the said A. B. doth by this deed or writing so sealed and delivered by him, and intended to be so attested as aforesaid, limit and appoint unto the said N. O. and P. Q., their executors, administrators, and assigns, ALL and singular the said hereditaments and premises hereinbefore particularly mentioned, and hereinbefore charged with such portion or portions and maintenance as aforesaid, or expressed and intended so to be: TO HAVE AND TO HOLD the said hereditaments and premises lastly hereinbefore limited and appointed, or expressed and intended so to be, (but subject and without prejudice to the said annual sum or yearly rent-charge of £——, and the powers and remedies and term of years for securing the

Witnesseth lastly, appointment of the premises charged to trustees.

Habendum for a term of years.

(*i*) See supra, p. 437, n. (*c*).

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

same), unto the said N. O. and P. Q., their executors, administrators, and assigns, for the term of one thousand five hundred years, to commence and be computed from the decease of the said A. B., and thenceforth next ensuing and fully to be complete and ended, without impeachment of waste, but upon the trusts, and for the intents and purposes, hereinafter declared of and concerning the same, (that is to say), UPON TRUST, that in case, and from time to time when and as the said sum of £——, or any part thereof, or any interest for the same by way of maintenance, shall become raisable or payable under or by virtue of the charge hereinbefore contained, and hereby made as aforesaid, THEY the said N. O. and P. Q., and the survivor of them, and the executors and administrators of such survivor, do and shall, (but subject and without prejudice as aforesaid), by mortgage, sale, or other disposition of the hereditaments and premises comprised in the said term of one thousand five hundred years, or any of them, or any part thereof, for all or any part of the same term, or by and out of the rents, issues, and profits of the same premises, or by bringing actions against the tenants or occupiers thereof for the rents then in arrear, or by more than one, or by all the ways and means aforesaid, or by any other reasonable ways or means, levy and raise the said sum of £——, or so much thereof as shall become payable, together with all such interest for the same as aforesaid, and pay or apply the same respectively to, between, or among, or for the maintenance and education, or otherwise for the benefit of the younger son or sons, daughter or daughters of the said A. B. by the said C. D., in such manner as the same respectively are and ought to be payable or applicable under or by virtue of the charge hereinbefore contained, and hereby made as aforesaid of the portion or portions and interest by way of maintenance respectively, [*Advancement clause, supra, p.* 516]: PROVIDED ALWAYS, an it is hereby agreed and declared between and by the partie to these presents, that the said N. O. and P. Q., or the survivor of them, or the executors or administrators of such survivor, shall not sell or mortgage any part or parts of the

In trust to raise the portions.

Advancement clause.

No sale or mortgage to be made under the trusts of the term till some portion become payable.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

said hereditaments and premises comprised in the said term of one thousand five hundred years, until some one of the said portions shall become payable by virtue of or under the trusts hereinbefore expressed, And that the rents, issues, and profits of the said hereditaments and premises shall, until some one of such portions shall become payable as aforesaid, be received and taken (but subject and without prejudice as hereinbefore is mentioned) by the person or persons who for the time being shall be entitled to the hereditaments and premises comprised in the said term of one thousand five hundred years, in reversion or remainder immediately expectant on the determination of the same term, to and for his and their own proper use and benefit: PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared between and by the parties to these presents, that, in case there shall be no child of the said intended marriage, who is by these presents intended to have or to be provided with a portion as aforesaid, or, there being any such child or children, if such child, or all such children, if more than one, shall die before any of them, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, or before such other times as shall or may be appointed for the vesting of his, her, or their portion or portions respectively as aforesaid, or if the person or persons to whom the next estate of and in the said hereditaments and premises comprised in the said term of one thousand five hundred years, in remainder or reversion expectant on the determination of the same term, shall from time to time belong, do and shall pay, or cause to be paid, the portion or portions and maintenance hereinbefore provided, or intended to be provided, for such child or children respectively, or so much thereof as shall be remaining unpaid, and when the said N. O. and P. Q., their executors, administrators, and assigns, shall have been fully paid and satisfied all costs, charges, and expenses, (if any), to be occasioned by or relating to the trusts of the said term of one thousand five hundred years, the same term shall, as to such of the hereditaments and premises com-

Proviso for cesser of the term.

UNDER POWERS OF JOINTURING AND CHARGING PORTIONS.

prised therein as shall not have been mortgaged or sold for the purposes aforesaid, cease and determine; and as to such of the hereditaments comprised therein as shall have been mortgaged for the purposes aforesaid, shall, subject to such mortgage or mortgages, wait upon and attend the freehold and inheritance of the premises so mortgaged (*k*): AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors, administrators, and assigns, and also as a separate covenant with the said I. K. and L. M., their executors, administrators, and assigns, and also as a separate covenant with the said N. O. and P. Q., their executors, administrators, and assigns, that, for and notwithstanding &c., [*for right to demise, supra, p.* 553; *for the due creation and validity of the powers, supra, p.* 552; *for the right to charge and appoint, supra, p.* 553; *and for further assurance, supra, p.* 554]. IN WITNESS &c.

Covenants for title.

(*k*) See supra, p. 508, n. (*m*). The introduction of a proviso for cesser is usually required by the terms of the power. As to powers to charge portions, see supra, p. 524, n. (*x*).

XIX.

GRANT *of a* JOINTURE RENT-CHARGE *to an* INTENDED WIFE, *with Powers of Distress and Entry* (*a*). COVENANT *by* INTENDED HUSBAND *that a* SUM *of Money shall be paid out of his Personal Estate to his* INTENDED WIFE, *in the Event of her surviving him, to be in Bar of all Claims thereon.*

GRANT OF RENT-CHARGE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*intended husband*], of the first part; C. D., of &c., [*intended wife*], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part: WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said A. B. and C. D.; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said A. B. should, in manner hereinafter mentioned, grant and secure an annual sum or yearly rent-charge of £—— to the said C. D. and her assigns during her life, by way of jointure and in bar of

Parties.

Recital of the agreement for marriage;

—of the agreement for the settlement.

(*a*) When it is intended to create a rent-charge with powers of distress and entry, but without a term of years for securing the rent-charge, (see supra, p. 504, n. (*k*)); it is sufficient to create the rent-charge, and confer the powers by way of grant. (Burton's Law of Real Property, Arts. 1102—1112). But if a term of years be required, the settlement must be made by lease and release, and the estates created by way of use in the usual manner. A life estate must be limited to the husband, followed by a limitation of the rent-charge, powers, and term, as in Precedent XVI., p. 501 et seq., with an ultimate limitation to the husband in fee. Powers of leasing and of sale and exchange must be added, which may overreach the jointure and the powers and terms, so as to give the husband the same control over the estate as he gets under an ordinary settlement. If the jointure be considerable, the latter method is to be followed; but otherwise, the short form in the text may be conveniently adopted.

Manner of creating a jointure rent-charge, and securing the payment of it, when no further settlement is intended.

GRANT OF RENT-CHARGE.

dower and freebench, as hereinafter mentioned, AND on the said treaty it was also agreed that the said A. B. should, in manner hereinafter mentioned, secure the sum of £—— to be paid to the said C. D. within six calendar months next after the decease of him the said A. B., in case of his dying during her lifetime, in full satisfaction of and for any share to which she the said C. D. might in that event become entitled of or in all or any part of the personal estate of him the said A. B. as is hereinafter more particularly mentioned. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. hath given, granted, and confirmed, and by these presents doth give, grant, and confirm, unto the said C. D. and her assigns, in case the said intended marriage shall be had and solemnized, and the said C. D., shall survive him the said A. B., one annual sum or yearly rent-charge of £—— during the life of her the said C. D., to be charged and chargeable upon and yearly issuing and payable out of ALL, &c. [*parcels*]; AND upon and out of their rights, easements, and appurtenances, and to be paid half-yearly by equal payments on the —— day of —— and the —— day of —— in every year, without any deduction or abatement whatsoever, And the first half-yearly payment to be made on such of the said days of payment as shall happen next after the decease of the said A. B.; AND THE SAID A. B. doth hereby grant and covenant to and with the said C. D. and her assigns, that when and so often as the said annual sum or yearly rent-charge of £——, or any part thereof, shall be unpaid by the space of twenty-one days next after any of the days hereby appointed for the payment thereof as aforesaid, THEN and so often it shall be lawful for the said C. D. and her assigns during her life to enter into and distrain upon the said hereditaments and premises hereby charged with the payment of the said annual sum or yearly rent-charge as aforesaid, or any part thereof, and to dispose of the distress or distresses then and there found according to law, To the intent, that thereby or otherwise

Witnesseth, grant of jointure rent-charge to the wife;

—and of a power of distress;

the said annual sum or yearly rent-charge of £——, and every part thereof so in arrear and unpaid, And all costs, charges, and expenses occasioned by reason of the nonpayment thereof, shall be fully paid and satisfied (*b*); AND FURTHER, that in case the said annual sum or yearly rent-charge of £——, or any part thereof, shall at any time or times be so in arrear and unpaid by the space of forty days next after any of the days appointed for the payment thereof, THEN and so often, although there shall not have been any legal demand made thereof, it shall be lawful for the said C. D. and her assigns to enter into and upon, and hold the said hereditaments and premises hereby charged with the payment of the said annual sum or yearly rent-charge as aforesaid, or any part thereof, and to receive and take the rents, issues, and profits to her and their own use, until she and they shall therewith and thereby, or otherwise, be fully paid and satisfied the said annual sum or yearly rent-charge of £——, and the arrears thereof due at the time of such entry, or afterwards to become due during her or their being in possession of the same premises, Together with all costs, charges, and expenses which she or they shall sustain by reason of the nonpayment thereof, such possession, when taken, to be without impeachment of waste (*c*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said annual sum or yearly rent-charge of £—— is granted to the said C. D. and her assigns as aforesaid, and she doth hereby expressly accept the same, in lieu, bar, and satisfaction of and for the dower and freebench to which by the common law or by custom, or otherwise, she the said C. D. would otherwise be entitled in, from, or out of all or any manors, messuages, lands, tenements, or hereditaments, in

GRANT OF RENT-CHARGE.

—and of a power of entry.

The jointure to be in bar of dower, &c.

(*b*) With respect to powers of distress, see supra, p. 504, n. (*k*).

(*c*) With respect to powers of entry, see supra, p. 504, n. (*k*). It may be observed, that the entry of the jointress under this power gives her an uncertain chattel interest determinable on the payment of all the monies which she is entitled by the terms of the power to recover. (*Jemott* v. *Cowley*, 1 Saund. 112; 1 Lev. 170).

GRANT OF RENT-CHARGE.

Great Britain or elsewhere, of which the said A. B. now is, or shall during the said intended coverture be seised or entitled for any estate to which dower or freebench is incident (*d*).

Witnesseth further, covenant by the husband that his representatives shall pay a sum of money to the wife, if she survive;

AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, that in case the said intended marriage shall take effect, and the said C. D. shall survive him the said A. B., then and in such case the heirs, executors, or administrators of him the said A. B. shall and will, within six calendar months next after his decease, pay or cause to be paid the sum of £—— to the said C. D., her executors, administrators, or assigns, for her or their proper use and benefit (*e*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the provision made for the said C. D., by the covenant hereinbefore contained, for the payment of the said sum of £—— is so made as aforesaid, and she doth hereby expressly accept the same in lieu and full satisfaction of and for any share or shares, interest or interests, to which she the said C. D., her executors or administrators, shall or may, or otherwise might, at common law or by custom, or under or by virtue of the statutes for the distribution of the effects of intestates, or otherwise howsoever, become entitled out of or in any personal estate or property whatsoever, of or to which he the said A. B. may be possessed or entitled at the time of his decease, in possession, reversion, remainder, or expectancy, and which may not be effectually bequeathed or disposed of by the last will and testament of him the said A. B., or any codicil or codicils thereto; And that such share or shares, interest or interests, to which she the said C. D. shall or may, or otherwise might, so become entitled, of or in any

—in lieu of all claims on his personal estate.

(*d*) See supra, p. 403, n. (*n*).

(*e*) As to the effect of a covenant of this nature on the husband's becoming bankrupt, and the right of the trustees to prove as a debt, see supra, p. 381, n. (*o*), p. 396, n.; see too supra, p. 367, n. (*a*).

such personal estate or property whatsoever, shall go and belong to the person or persons who would have been entitled thereto if she the said C. D. had died in the lifetime of the said A. B. (*f*). IN WITNESS &c.

GRANT OF RENT-CHARGE.

XX.

SETTLEMENT *on* MARRIAGE *for the* SEPARATE USE *of the Wife of her* JOINTURE RENT-CHARGES *under a Settlement on a former Marriage, and of a* HOUSE, FURNITURE, JEWELS, *and other Chattels to which she is entitled, partly for Life, and partly absolutely under the Will of her former Husband.* COVENANT *to* SETTLE ALL *other* PRESENT *and* AFTER-ACQUIRED *Property for her* SEPARATE USE.

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

THIS INDENTURE, made &c., BETWEEN C. D., of &c., [*intended wife*], of the first part; A. B., of &c., [*intended husband*], of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part; [*Recital of the wife's settlement on a former marriage, limiting to her in the events which have happened two jointure rent-charges for her life of £—— and £——; of her former husband's will, giving her for her life a mansion-house and appurtenances, partly freehold and partly leasehold, and the household goods and furniture, pictures, books, and effects therein, (except plate), she keeping the house in repair, but the rent of the leasehold being paid by his executors, and also giving her her own jewels, rings, diamonds, and paraphernalia*

Parties.

Recital of the wife's interest, partly for life, and partly absolutely, under a settlement on a former marriage and the will of a deceased husband.

(*f*) A provision expressed to be in lieu of dower and thirds at common law, does not bar the widow of her distributive share in her husband's undisposed of personal estate. *Colleton* v. *Garth*, 6 Sim. 49; see too supra, p. 403, n. (*s*).

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

absolutely, and certain other jewels, &c., only for her life—of the death of the husband, and the probate of his will—of the agreement for the marriage, supra, p. 309]: AND WHEREAS, on the treaty for the said intended marriage, it was, among other things, agreed that the said annual sums or yearly rent-charges of £—— and £—— should be limited and settled To the uses, upon the trusts, and in manner hereinafter mentioned; AND upon the same treaty, it was also agreed that the said mansion and other hereditaments in ——, and the household goods and furniture, pictures, books, and effects therein, to which the said C. D. is entitled for her life under the said will, as hereinbefore is mentioned, and also the said jewels, rings, diamonds, and trinkets to which she is entitled for her life under the same will as aforesaid, should be respectively settled upon the trusts and in manner hereinafter mentioned of and concerning the same respectively; AND upon the same treaty, it was also agreed that the said jewels, rings, diamonds, and paraphernalia to which she the said C. D. is absolutely entitled under the said will, should be settled upon the trusts and in manner hereinafter mentioned; AND on the same treaty, it was also agreed that these presents should contain such covenant as is hereinafter contained for the settling of all other the real and personal estate of or to which the said C. D. now is, or she or the said A. B. in her right shall, during the said intended coverture, become entitled. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, she the said C. D. (with the privity and consent of the said A. B., testified by his being a party to and executing these presents) hath granted, released, and assigned, and by these presents doth grant, release, and assign, unto the said E. F. and G. H., (as to such of the freehold parts thereof as consist of corporeal hereditaments (*a*) in their actual possession &c., *ante, Vol. 3, p.* 198), and their execu-

Recital of the agreement for the settlement of her jointure rent-charges;

—of her life interest in freehold and leasehold estate, jewels, and chattels;

—and of her absolute interest in other jewels and chattels;

—and of all other the wife's present and after-acquired property.

Witnesseth grant and assignment by the wife;

(*a*) The rent-charges being incorporeal hereditaments, need not be included in the lease for a year.

tors, administrators (*b*), and assigns, ALL THOSE the said annual sums or yearly rent-charges of £—— and £——, respectively, limited to the said C. D. as hereinbefore is mentioned, and all powers and remedies for compelling payment thereof; AND ALSO all that the said mansion and dwelling-house, coach-house, stables, and all and singular other the freehold and leasehold hereditaments and premises in —— by the said will of the said —— given to, or to the use of, the said C. D. for her life as aforesaid, with their and every of their appurtenances; AND ALSO all and singular the household goods and furniture, pictures, books, and effects in the said mansion and premises at the time of the death of the said ——, and the use and enjoyment of which was given to the said C. D. for her life by the said will as aforesaid; AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD the said rent-charges, mansion, and all and singular the freehold hereditaments hereinbefore granted and released, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, TO THE USE of the said E. F. and G. H., their executors, administrators, and assigns, during the life of the said C. D., upon the trusts hereinafter declared of the same; AND TO HAVE AND TO HOLD all such of the hereditaments hereinbefore released and assigned, or expressed and intended so to be, as are held on any lease or leases for years unto the said E. F. and G. H., their executors, administrators, and assigns, during the life of the said C. D., in case the term or terms for which the said premises are, or under any renewal thereof, shall be, holden, shall so long continue, upon the trusts hereinafter declared of the same; AND TO HAVE AND TO HOLD the said household goods, furniture, pictures, books, and effects, and all and singular other the personal chattels hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

—of her jointure rent-charges;

—her life estate in freeholds and leaseholds;

—and furniture and household goods and pictures.

Habendum as to the freeholds;

—as to the leaseholds;

—as to the personal chattels.

(*b*) The real property being holden pur auter vie, may be granted to the executors and administrators, instead of to the heirs of the trustees. The convenience of this is obvious.

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

the life of the said C. D., nevertheless upon the trusts hereinafter declared of the same; AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be seised and possessed of the said rent-charges, mansion-house, hereditaments, furniture, effects, and all and singular other the premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, IN TRUST for the said C. D. and her assigns in the meantime, and until the said intended marriage shall be had and solemnized, AND FROM and after the solemnization thereof, UPON TRUST that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, by and out of the said annual sums or yearly rent-charges, or by and out of the rents and profits of the said other premises, or by demising or mortgaging the same, or any part thereof, levy and raise such sum or sums of money as shall from time to time be necessary for payment of the expenses of keeping the said mansion-house and premises in good repair, order, and condition, in manner directed by the said will, and do and shall apply the money so to be levied and raised, or any other monies which shall come to the hands of the said trustees or trustee by virtue of these presents, in satisfaction of such expenses accordingly; AND, SUBJECT as hereinbefore is mentioned, do and shall stand and be seised and possessed of, and interested in, all and singular the said annual sums or yearly rent-charges, freehold and leasehold hereditaments and personal estate and premises hereinbefore granted, released, and assigned respectively, or expressed and intended so to be, IN TRUST for the sole and separate use of the said C. D., independently and exclusively of the said A. B., and so as not to be subject to his debts, control, interference, or engagements, and the receipt or receipts in writing of the said C. D., and such receipts only, to be from time to time good and effectual discharges to the said trustees or trustee for the time being of these presents for any monies payable to

All the property previously granted and assigned to be in trust for the wife till marriage;

—and after marriage, in trust in the first place to pay incidental charges;

—and subject thereto, in trust for the wife's separate use during the joint lives of herself and husband;

her under the trusts hereinbefore contained (*c*); AND FROM and after the death of the said A. B., in case the said C. D. shall survive him, do and shall stand and be seised and possessed of the said freehold and leasehold hereditaments, personal estate, and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, in trust for the said C. D. and her assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the said intended marriage, she the said C. D., with the privity and consent of the said A. B., (testified as hereinbefore is mentioned), hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, ALL THOSE the jewels, rings, diamonds, trinkets, and paraphernalia, by the said will given to the said C. D. for her own use and disposal, as hereinbefore is mentioned, AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD the said jewels, rings, diamonds, trinkets, and paraphernalia, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said C. D., her executors, administrators, and assigns, in the meantime, and until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, IN TRUST, during the joint lives of the said A. B. and C. D., to permit and suffer the same premises to be used and enjoyed, or given or exchanged, or otherwise disposed of by the said C. D. as her separate estate, independently and exclusively of the said A. B., and so that the same shall not be subject or liable to his debts, control, interference, or engagements; AND FROM and after the death of the said A. B., in case the said C. D. shall survive him, do and shall stand and be possessed of and interested in the said last-mentioned jewels, rings, diamonds, trinkets, paraphernalia, and premises, or such of them as shall not have been given,

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

—and after the death of the husband, if the wife survive, in trust for her and her assigns.

Witnesseth further, assignment by the wife of the jewels and trinkets to which she is absolutely entitled.

Habendum.

In trust for the wife till the marriage;

—and after the marriage, for her separate use during the joint lives of herself and her husband;

—and after the death of the husband, if the wife survive, in trust for her absolutely.

(*c*) See supra, p. 316, n. (*g*).

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

exchanged, or otherwise disposed of by the said C. D. during her coverture, IN TRUST for her the said C. D., her executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, [*Assignment of the jewels, rings, diamonds, and trinkets, given to C. D. for her life*]: TO HAVE AND TO HOLD the said last-mentioned jewels, rings, diamonds, and trinkets, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said C. D. and her assigns in the meantime, and until the said intended marriage shall be had and solemnized; AND FROM and after the solemnization thereof, IN TRUST, during the joint lives of the said A. B. and C. D., to permit and suffer the same premises to be used and enjoyed by the said C. D. as her separate estate, independently and exclusively of the said A. B., and so that the same shall not be subject to his debts, control, interference, or engagements; AND AFTER the death of the said A. B., in case the said C. D. shall survive him, do and shall stand and be possessed of and interested in the said last-mentioned jewels, rings, diamonds, trinkets, and premises, IN TRUST for the said C. D. and her assigns: AND EACH of them the said A. B. and C. D. doth hereby, for himself and herself, his and her heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, in manner following, (that is to say), THAT if, at the time of the solemnization of the said intended marriage, the said C. D. is, or if at any time or times during the said intended coverture the said C. D., or the said A. B. in her right, shall become entitled by descent, transmission, claim, devise, bequest, gift, donation, representation, or otherwise, to any real or personal property not herein otherwise comprised, which shall amount or be equal in value to the sum of £—— sterling for any estate or interest whatsoever, then and in such case the said A. B. and C. D. shall and will, at the costs and charges of the said trust estates, from time to time, as soon as the case will admit, by good and effectual conveyances, assignments, and assurances, or other acts

Witnesseth further, assignment of the jewels, &c., which the wife has for life.

Habendum.

In trust for the wife till marriage;

—and after marriage, in trust for the separate use of the wife during the joint lives of herself and her husband;

—and after the death of the husband, if the wife survive, in trust for her and her assigns.

Covenants by the husband and wife to settle all other present and after-acquired property of the wife.

and deeds in the law, to the good liking and satisfaction of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, convey, assign, settle, and assure, or otherwise cause to be well and effectually vested in the said E. F. and G. H., or the survivor of them, their or his heirs, executors, administrators, and assigns respectively, according to the nature and quality thereof respectively, all and singular the said real and personal estate to which the said C. D. is or shall be entitled, at the time of the solemnization of the said intended marriage, or to which she, or the said A. B. in her right, during the said intended coverture, shall so become entitled as aforesaid for all her estate and interest therein; NEVERTHELESS, upon such trusts and for such intents and purposes as are hereinafter declared and contained, (that is to say), UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said C. D., shall, notwithstanding her said intended coverture, by any deed or writing to be sealed or delivered by her, direct or appoint; AND FOR DEFAULT of, and until such direction or appointment, and so far as no such direction or appointment shall extend, UPON TRUST that they the said E. F. and G. H., their executors, administrators, and assigns, do and shall, during the joint lives of the said A. B. and C. D., permit the rents, issues, and annual profits, interest, dividends, and annual produce thereof, or of so much thereof as shall yield rents, issues, or annual profits, interest, dividends, or annual produce, and also the corpus or principal of all such real and personal estate, and all the estate and interest therein, to be used and enjoyed for the sole and separate use of the said C. D., independently and exclusively of the said A. B., and so as not to be subject to his debts, control, interference, or engagements, and the receipts in writing of the said C. D., and her receipts only, to be from time to time good and effectual discharges to the trustees or trustee for the time being of these presents; AND FROM and after the death of such one of them the said A. B. and C. D. as shall first die, do and shall hold all such real and personal estate as aforesaid, or so much thereof as shall not have

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

Upon trusts,

—as the wife shall appoint;

—and in default of appointment,

—in trust for the separate use of the wife during the joint lives of herself and her husband;

—and after the death of such one of them as shall first die,

OF THE WIFE'S LIFE ESTATE AND HER JEWELS, &c., FOR HER SEPARATE USE.

been disposed of under the power of appointment, or under the right of disposal by virtue of the trust for the separate use of the said C. D. hereinbefore contained, UPON AND FOR the trusts, intents, and purposes following, (that is to say), IF THE SAID A. B. shall die in the lifetime of the said C. D., then in trust for the said C. D., her heirs, executors, administrators, and assigns; BUT IF THE SAID C. D. shall die in the lifetime of the said A. B., then (except as to such part and parts of the said real and personal estate in which the interest shall determine on the death of the said C. D.), Upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as the said C. D. shall, notwithstanding her said intended coverture, by her last will and testament, or any codicil thereto, or any writing in the nature of, or purporting to be, a will or codicil, direct or appoint; AND IN DEFAULT of such direction or appointment, and so far as no such direction or appointment shall extend, As TO SUCH property as shall be real estate, IN TRUST for the heirs of the said C. D. in such and the same manner as if the said C. D. had died entitled to the same without having been married to the said A. B., and intestate; AND AS TO SUCH parts of the said property as shall be personal estate, IN TRUST for the person or persons who, under the statutes for the distribution of the personal estates of intestates, would have been entitled thereto in case the said C. D. had died possessed thereof, or entitled thereto, without having been married to the said A. B., and intestate, such persons, if more than one, to take in the shares in which they would have taken under the said statutes (*d*); [*Power to trustees to give receipts, supra, p. 323.—Power to appoint new trustees, supra, p. 324.—Clauses for the indemnity and payment of trustees, supra, pp. 326, 327*]. IN WITNESS &c.

—if the husband die first, in trust for the wife absolutely;

—if the wife die first, as she shall by will appoint;

—and in default of appointment,

—as to real estate, in trust for the wife's heirs;

—and as to personal estate, for her kin of her own blood.

Trustee clauses.

(*d*) The covenant in the text was framed to meet a particular case, in which it was apprehended that the intended wife might become actually entitled, under existing settlements, to the estates of her family; and it was desired that the husband should take no interest in them. There was no probability of issue of the marriage. See the more usual form of a covenant to settle after-acquired property, supra, p. 387 et seq.

XXI.

VOLUNTARY SETTLEMENT *of* REAL *and* PERSONAL *Estate in favour of the Wife and Children of the Settlor, Maintenance being secured to himself* (*a*).

VOLUNTARY.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*settlor*], and E. B. his wife, of the first part; C. B., of &c., (the only son of the said A. B. and E. B.), of the second part; and E. F., of &c., and G. H., of &c., [*trustees*], of the third part: WHEREAS the said A. B. is seised or entitled for an estate of inheritance in fee-simple in pos-

Parties.

Recital of the settlor's ownership of real and personal estate;

(*a*) A voluntary settlement or disposition means, in legal language, a settlement or disposition made without valuable consideration. Money, money's worth, marriage, and the like, are valuable considerations; but blood, natural love and affection, and the like, are only good considerations. (2 Black. Com. 297). Settlements founded only on these good considerations, (as a settlement, for example, made after marriage in favour of a wife and children), are void, under the stat. 13 Eliz. c. 5, against creditors of the settlor, if he be not in a solvent condition at the time of making the settlement; and are void, under the stat. 27 Eliz. c. 4, against subsequent purchasers from the settlor, without notice of the settlement. (See the cases on these subjects, ante, Vol. 1, Art. SETTLEMENTS; 3 Sugd. Vend. ch. xxi., 10th ed.; IV. Cru. Dig. by White, Tit. XXXII., ch. xxvii. See, too, the recent case of *Whittington* v. *Jennings*, 6 Sim. 493). Hence, it is extremely important to state, on the face of settlements not made on marriage, any circumstances which may take away from them the character of being voluntary. Thus, the arrears or the release of an existing voluntary annuity, are a valuable consideration for a subsequent security. (*Stiles* v. *Attorney-General*, 2 Atk. 152; *Jones* v. *Boulter*, 1 Cox. 288; *Gilham* v. *Locke*, 9 Ves. 612; see, too, *Tanner* v. *Byne*, 1 Sim. 160, 167; *Bowen* v. *Kirwan*, Lloyd & Goold, Cas. T. Sugd. 47). And where a debtor, pending a suit and before execution, being insolvent, assigns all his effects to trustees for the benefit of his creditors, such assignment is not void. (*Pickstock* v. *Lyster*, 3 Mau. & S. 371).

Voluntary settlements.

VOLUNTARY.

session of or to the messuage, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby released, with the appurtenances, and is also possessed of or entitled to certain personal estate and effects; AND WHEREAS, in consideration of the natural love and affection which the said A. B. bears to the said E. B., his wife, and the said C. B., his son, and to M. and N., his daughters, and of the covenant hereinafter contained on the part of the said C. B., and for divers other good causes and considerations (*b*), the said A. B. hath agreed to convey the said messuage, lands, and other hereditaments to the uses and in manner hereinafter mentioned, and to assign the said personal estate and effects unto the said C. B., for his proper use and benefit. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for the considerations aforesaid, he the said A. B. hath granted, released, and confirmed, and by these presents doth grant, release, and confirm, unto the said C. B. (in his actual possession, &c., *ante, Vol. 3, p.* 198) and his heirs, ALL, &c. [*parcels—general words*]: TO HAVE AND TO HOLD the said messuage, lands, and hereditaments, and all and singular other the premises hereby granted and released, or expressed and intended so to be, unto the said C. B. and his heirs, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and contained of and concerning the same, (that is to say), TO THE USE and intent, [*limitation of a rent-charge to E. B. with the usual powers of distress and entry, supra, p.* 502 (*c*), *and of a term of one thousand years upon the trusts to be afterwards declared, supra, p.* 504]; AND from and after the expiration or sooner determination of the said term of one thousand years, and in the meantime subject thereto and

—of the agreement for the settlement.

Witnesseth, conveyance of the settlor's real estate.

Habendum.

To uses.

(*b*) As to the effect of this statement, see supra, p. 565, n.; see, too, the last page, n. (*a*).

(*c*) A shorter form of the powers of distress and entry is given supra, p. 576.

VOLUNTARY.

to the trusts thereof, To SUCH USES, &c. [*to uses to bar dower in favour of C. B., ante, Vol. 3, p. 214*]: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said messuage, lands, hereditaments, and premises are hereby limited to the said E. F. and G. H., their executors, administrators, and assigns, for the said term of one thousand years, Upon trust, that they the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall from time to time, during the life of the said A. B., by and out of the rents, issues, and profits of the said messuage, hereditaments, and premises comprised in the said term of one thousand years, or any disposition of the same premises, or any part thereof, for all or any part of the same term, or by bringing actions against the tenants or occupiers of the same premises for the rents then in arrear, or by more than one, or by all of the ways or means aforesaid, or by any other reasonable ways or means, levy and raise such sum or sums of money as shall be sufficient for the maintenance and support of him the said A. B. in a proper and suitable manner; AND DO AND SHALL apply the monies so to be levied and raised as aforesaid for that purpose accordingly; PROVIDED ALWAYS, and it is hereby agreed and declared, that the said trustees or trustee shall not act in the execution of the said trusts hereinbefore declared during the joint lives of the said A. B. and C. B., so long as the said C. B. shall at his own costs and charges support and maintain the said A. B. in a proper and suitable manner, pursuant to the covenant hereinafter in that behalf contained; AND UPON THIS FURTHER TRUST, that they the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall, immediately after the decease of the said A. B., by all or any of the ways and means aforesaid, levy and raise the sum of £——, and pay the same to the said M., her executors, administrators, and assigns; AND ALSO levy and raise the like sum of £——, and pay the same to the said N., her executors, administrators, and assigns; AND UPON THIS FURTHER TRUST, that, if the said annuity or

Declaration of the trusts of a term of years, to raise sufficient for the maintenance of the settlor;

—but the trustees not to act under the term so long as the settlor is duly maintained by his son;

—and to raise and pay certain sums to the daughters of the settlor;

—and secure the payment of a rent-charge

VOLUNTARY.

previously limited.

yearly rent-charge of £——, or any part thereof, shall at any time or times be in arrear and unpaid by the space of forty days next after any day on which the same ought to be paid as aforesaid, then and in such case, and when and so often as the same shall happen, they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, by all or any of the ways and means aforesaid, levy and raise such sum or sums of money as will be sufficient, or as he or they shall think fit or expedient to raise, for the paying and satisfying of the said E. B. or her assigns the said annual sum of £——, or such part thereof as shall be so in arrear and unpaid, and all costs, charges, and expenses incident thereto, And do and shall apply the money so to be levied and raised, or a competent part thereof, in or towards satisfaction of the said arrears, costs, charges, and expenses, accordingly, and pay the surplus or residue thereof (if any) unto the said C. B., his heirs, appointees, or assigns, or the person or persons for the time being entitled to the reversion and inheritance of the said messuage, lands, and premises immediately expectant on the said term of one thousand years (*d*); AND UPON THIS FURTHER TRUST, [*trust for the reversioner, supra, p.* 510]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the considerations aforesaid, he the said A. B. hath assigned, and by these presents doth assign, unto the said C. B., his executors, administrators, and assigns, ALL and singular the monies and securities for money, goods, chattels, and other personal estate and effects whatsoever and wheresoever, of or to which he the said A. B., or any person or persons in trust for him, is, are, shall or may be possessed or entitled in possession, reversion, remainder, or expectancy, or otherwise howsoever; AND ALL THE ESTATE, &c., TOGETHER with, &c., [*Power of attorney, supra,*

Witnesseth further, assignment of personalty to the son for his own use.

Jointure and portions not to be secured by a single term.

(*d*) This precedent is extremely compendious in its forms and language, having been taken from a settlement of a very small property. In ordinary cases, there should be a separate term for raising the portions, as in Precedent XVI. supra, pp. 504—508.

p. 336]: TO HAVE AND TO HOLD the said monies, chattels, personal estate and effects, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said C. B., his executors, administrators, and assigns, for his and their own use and benefit: [*Covenant by A. B. with C. B., his heirs, executors, administrators, and assigns, that A. B. has not done any act whereby the real estate may be incumbered, ante, Vol. 3, p.* 249, *adding*, "or whereby or by reason or means whereof, he the said A. B. is in anywise prevented or hindered from assigning the said personal estate and premises hereinbefore assigned, or expressed and intended so to be, unto the said C. B., his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents,"—*and for further assurance, supra, p.* 338, *adding*, "and for better enabling him the said C. B., his executors, administrators, and assigns, to recover, receive, and get in the same, or any part thereof, as by the said C. B., his heirs, executors, administrators, or assigns, respectively, or his or their counsel in the law, shall be reasonably devised, or advised and required"]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement on the part of the said C. B., and in consideration of the premises, he the said C. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said E. F. and G. H., their executors and administrators, in manner following, (that is to say), THAT he the said C. B., his heirs, executors, administrators, or assigns, shall and will henceforth, during the life of the said A. B., well and sufficiently provide the said A. B. in lodging, meat, drink, clothing, physic, and washing, and in all other respects maintain him the said A. B. in a proper and suitable manner. IN WITNESS &c.

Habendum.

Covenants against incumbrances and for further assurance.

Witnesseth further, covenant by the son of the settlor to maintain him.

XXII.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

SETTLEMENT *by a* HUSBAND *of Real Estate in Favour of himself, his Wife, and Children. The* ESTATES *are limited to Trustees for a* TERM *of* YEARS DETERMINABLE *with the* LIVES *of the Husband and Wife, upon* TRUSTS *for the* MANAGEMENT *of the Estates and Mines, and for the Separate Use of the Wife.* ASSIGNMENT *of* LEASES *for Years upon Trusts for* RENEWAL, *and upon Trusts to correspond with the Limitations of the Freeholds.* ASSIGNMENT *of* SHARES *and* STOCKS UPON *Trusts for* EXONERATING *the Real Estates from* PORTIONS *charged thereon.* ASSIGNMENT *of* MACHINERY *and* MINING STOCK *upon Trusts for* WORKING *the same, and upon Trusts to correspond with the Limitations of the Freeholds.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. B., his wife, of the first part; E. F., of &c., and G. H., of &c., [*trustees for management, and of the powers*], of the second part; I. K., of &c., and L. M., of &c., [*trustees of jointure term*], of the third part; and N. P., of &c., and Q. R., of &c., [*trustees of the portions term, and to preserve contingent remainders*], of the fourth part: [*Recital of marriage settlements, under which, subject to an annual sum of pin-money to C. D., and a term of ninety-nine years for securing it, and to a jointure for C. D., and a term of two hundred years for securing it, and to a term of one thousand years for raising portions for the children of A. B. and C. D., A. B. is seized in fee-simple of the hereditaments to be settled—of certain leases granted to A. B. for twenty-one years—of mortgages in fee, and indemnities secured by terms of eight hundred and nine hundred years, in granting*

Recitals shewing the estates subsisting in the lands, the ultimate estate in fee-simple being in the settlor;

which C. D. had joined]; AND WHEREAS the said A. B. is possessed of —— shares in ——, and of —— shares in ——, &c.; AND WHEREAS the said C. D. executed the hereinbefore recited indentures of the —— day of —— and the —— day of —— respectively, upon an agreement with the said A. B., that he the said A. B. should convey and assure all and singular the said freehold and copyhold hereditaments particularly mentioned and comprised in the said schedule hereunder written or hereunto annexed, and intended to be hereinafter granted and released, and covenanted to be surrendered respectively, with their respective rights, members, and appurtenances, (subject, nevertheless, to the conveyance made by the said indentures of lease and release of the —— and —— days of ——, and to the surrender or surrenders by the same indenture of release covenanted to be made as aforesaid, and to the trusts declared by the same indenture of release, and to the said several terms of eight hundred years and nine hundred years, and the trusts of the same terms respectively, and to the surrenders or other assurances by the said indenture of the —— day of ——, and the —— day of ——, respectively, covenanted to be made as aforesaid), TO THE USES, upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and limitations hereinafter limited, expressed, and declared, or contained of or concerning the same respectively, and that he the said A. B. should assign and settle in the manner hereinafter mentioned the leasehold premises comprised in, and demised by, the hereinbefore recited indentures of the —— day of —— and the —— day of —— respectively, with their respective appurtenances; and also the said —— and —— shares and stock, and also the railway carriages and other moveable chattels hereinafter specified; AND WHEREAS there is issue of the said marriage between the said A. B. and the said C. D., —— the eldest son, and other children, namely, ——. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the hereinbefore recited agreement, and in consideration of the premises, he the said A. B. hath granted, released, and confirmed, and by these presents doth

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

—of the settlor being possessed of certain shares;

—of the agreement for the settlement;

—of the existing children of the settlor.

Witnesseth, conveyance to releasees.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

Parcels.

grant, release, and confirm, unto the said N. P. and Q. R., (in their actual possession, &c., *ante, Vol. 3, p.* 198), and their heirs, ALL AND SINGULAR the manors or lordships of &c., and all and singular other the messuages, farms, lands, rents, tenements, and other hereditaments in the counties of —— and ——, forming and constituting the several estates and properties, and containing the several quantities, and in the tenure or occupation of the several persons, mentioned and specified in the schedule hereunder written or hereunto annexed, (save and except out of the conveyance hereby made, all such part or parts of the said hereditaments and premises hereby granted and released, or expressed and intended so to be, as is or are of copyhold or customary tenure (*a*)), And also, (by way of conveyance, and not of exception), ALL AND SINGULAR, &c. [*general words*]: TO HAVE AND TO HOLD the said manors or lordships, messuages or tenements, farms, lands, and hereditaments, and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be, unto the said N. P. and Q. R., and their heirs, (subject, nevertheless, to the conveyance made by the hereinbefore recited indentures of the —— and —— days of ——, and the trusts thereof, and to the mortgages which have already been made to the said —— &c., as hereinbefore is mentioned or referred to, and to the said terms of eight hundred years and nine hundred years, and the trusts thereof respectively), TO THE USES, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, expressed, and declared of and concerning the same, that is to say, TO THE USE of the said E. F. and G. H., their executors, administrators, and assigns, for the term of seventy years, to commence from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, if the said A. B. and C. D. shall jointly so long live, without impeachment of waste, nevertheless, upon the trusts,

Habendum,

—subject to the existing estates.

To the use of trustees for seventy years upon trusts to be subsequently declared.

(*a*) See ante, Vol. 3, p. 354, n. (*e*).

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same; AND FROM and immediately after the expiration or other sooner determination of the said term of seventy years, determinable as aforesaid, and in the meantime subject thereto, and to the trusts thereof, TO THE USE, &c. [*of A. B. for life—remainder to N. P. and Q. R., and their heirs—to preserve contingent remainders—limitations to the intent that C. D. may receive a jointure, if she survive A. B.—subject thereto to I. K. and L. M., their executors, administrators, and assigns, for two hundred years, upon trusts to be subsequently declared—subject thereto to N. P. and Q. R., their executors, administrators, and assigns, for one thousand five hundred years, upon trusts to be subsequently declared; see the forms of these limitations, supra, pp.* 502—505]; AND FROM and after the expiration or sooner determination of the said term of one thousand five hundred years, and in the meantime subject thereto, and to the trusts thereof, TO THE USE of the said [*eldest son of A. B. and C. D.*], and the heirs male of his body lawfully issuing, AND FOR DEFAULT of such issue, to the use of the second and every other the son and sons of the body of the said A. B. on the body of the said C. D. to be begotten, &c. [*in tail male, supra, p.* 505], AND IN DEFAULT of such issue, to the use of the said A. B., his heirs and assigns, for ever: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said hereditaments and premises hereinbefore limited to the said E. F. and G. H., their executors, administrators, and assigns, for the said term of seventy years, determinable as aforesaid, are so limited to them upon the trusts following, that is to say, UPON TRUST, during the same time to receive and take the rents, issues, and profits of the same hereditaments and premises, and to pay and apply the same to such person or persons, and for such intents and purposes, as the said C. D. shall from time to time, notwithstanding her coverture, by any writing or writings under her hand, direct or appoint, and in default of such direction or appointment,

—and subject thereto to other uses.

Declaration of the trusts of the term of seventy years.

Upon trust during the joint lives of the settlor and his wife, for the separate use of the wife.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

into the proper hands of the said C. D., to the intent that the same may be for her sole and separate use, and may not be subject to the debts, contracts, engagements, or control of the said A. B., And the receipt or receipts in writing of the said C. D., or of such person or persons as she shall from time to time direct or appoint to receive the same rents, issues, and profits, to be, notwithstanding her coverture, a good and effectual discharge, and good and effectual discharges, for such sum or sums of money as in such receipt or receipts shall be mentioned and acknowledged to be received: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of them, his executors or administrators, and they and he are and is hereby required, during the said term of seventy years, determinable as aforesaid, to hold all the proper courts for the said manors or lordships, and to let, set, and manage the messuages and lands, hereditaments and premises, hereby granted and released, or expressed and intended so to be, with power to maintain and keep in repair the said messuages, lands, hereditaments, and premises, when and in case they or he shall think fit, and to make any allowances or abatements to any tenants or tenant, or other persons or person, which they or he shall think proper, and from time to time to accept any surrender or surrenders of any lease or leases of any part or parts of the said hereditaments and premises now existing, or hereafter to be granted, and to make any reduction of the rent reserved by any lease or leases of any part or parts of the premises, either now existing or hereafter to be granted, and to insure against loss or damage by fire, in case and when they or he shall think fit, any houses or other buildings, or any colliery, stock, or other effects which for the time being shall be standing or be upon the said lands, hereditaments, and premises hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof respectively, for such sum or sums of money as they or he shall think fit, and to receive any monies which may become payable under or in respect

Powers for the trustees of the term to manage the estates, insure, fell timber, &c.;

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

of any such insurance or insurances, and apply the same in rebuilding, repairing, or replacing the houses, buildings, stock, or effects, in respect of which the same shall be reserved, and from time to time to fell timber in the usual course, and to sell the same when fallen, (the proceeds of such sales to be considered rents and profits), and from time to time to erect any houses or buildings which they or he shall think fit in or upon any parts or part of the said lands, hereditaments, and premises hereinbefore granted and released, or expressed and intended so to be, or any of them, and to make, do, and execute any improvements which they or he shall think proper in or about the same premises, or any of them, or any part or parts thereof; And they and he are and is hereby further empowered, during the said term of seventy years, determinable as aforesaid, to manage the collieries, mines, and quarries within and under the said lands hereinbefore granted and released, or expressed and intended so to be, or any part or parts thereof, and to bore and search for, and win, work, and get, dress, smelt, manufacture, and render merchantable all or any of the seam and seams of coal, lead or iron ore, stone, and other mineral substances whatsoever, upon or under any parts of the lands hereinbefore granted and released, or expressed and intended so to be, whether the same be now opened or unopened, with full power to dig, sink, and make pits, shafts, grooves, drifts, water-gates, and watercourses, as well for the working, winning, and getting of the coal, lead and iron ore, stone, and other mineral substances, in and upon, and from, forth, and out of every part of the said lands, as for the carrying away of water, styth, stench, and foul air therefrom, and to use such ground room, heap room, and pit room, for bringing to bank, depositing, and carrying the coals and other things which shall from time to time be got from, forth, and out of the said lands, and to dress, smelt, and render merchantable, and carry away or dispose of the said coals, lead and iron ore, stone, and other mineral substances, and in or upon any part of the said lands to erect and make waggon ways, tram roads, railways, and other ways, canals, bridges, tunnels, and in-

—and carry on mining operations.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

clined planes, weighing machines, and other works and conveniences, and to repair and alter the same from time to time, and to make and build within and upon any part of the same hereditaments, all such gins, engines, machines, houses, stables, furnaces, forges, founderies, hovels, granaries, erections, and buildings whatsoever, as shall be necessary for the accomplishing of all or any of the purposes aforesaid, or for the residence of any of the agents or workmen employed therein, or the sustaining or keeping of the horses and other live stock used in and about the same, and to purchase all such horses and other live stock, railway and other carriages, steam engines, machinery, and other articles or effects as shall be necessary and proper for the accomplishing of any of the purposes aforesaid, and for all or any of the purposes hereinbefore expressed, it shall be lawful for the said trustees or trustee for the time being to engage, hire, and employ all such managers, agents, stewards, viewers, receivers, bailiffs, gamekeepers, workmen, or other persons, as they or he shall think fit, so, nevertheless, that every manager of any of the said collieries, mines, or quarries, shall be approved of by the said C. D., by writing under her hand, And further, that it shall be lawful for the said trustee or trustees for the time being to defray all the expenses to be incurred from time to time for any of the purposes aforesaid out of the produce of the working of the said mines, or other the rents, issues, and profits to be received by them or him as such trustees or trustee as aforesaid: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that all horses and other live stock, and all railway and other carriages, steam engines, machinery, and other articles and effects not affixed to the freehold, which shall be purchased by the said E. F. and G. H., or the survivor of them, or his executors or administrators, shall be held by them or him, and their or his executors, administrators, or assigns, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations as are hereinafter declared, expressed, and contained, or referred to, of and concerning the railway carriages and other

Machinery and stock purchased, to be held on the trusts of the stock and machinery subsequently assigned.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

personal chattels hereinafter assigned, or expressed and intended so to be: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said C. D., by any writing under her hand directed to the said E. F. and G. H., or the survivor of them, his executors or administrators, to control, direct, and regulate in all respects, or to enlarge or extend in such manner as she shall from time to time think proper, the management by them or him of the said manors or lordships, collieries, mines, quarries, hereditaments, and premises, and in particular to require the said E. F. and G. H., or the survivor of them, his executors or administrators, to engage, employ, or hire, or cease to employ or to dismiss any managers, agents, stewards, viewers, receivers, bailiffs, gamekeepers, workmen, or other persons to be engaged, employed, or hired for any of the purposes hereinbefore mentioned: PROVIDED ALSO, that the said E. F. and G. H., or the survivor of them, his executors or administrators, shall not be at liberty to let or exercise any rights of shooting or fishing or other sporting over or upon any part of the said manors or lordships and other hereditaments hereinbefore granted and released, or expressed and intended so to be, or to sell any game or fish from off any part of the same premises, unless they or he shall be expressly required so to do by the said C. D., by writing under her hand: [*Trusts of the term of two hundred years for securing the jointure, with proviso for cesser, supra, pp.* 508—510: *Trusts of the term of one thousand five hundred years, for raising £—— for portions for younger children, in addition to any portion or portions to which they respectively may become entitled under the trusts declared by an indenture of settlement previously mentioned of a term of one thousand years thereby limited, see supra, p.* 511, *and after the Maintenance clause, add,* " PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the money raisable for maintenance and education under the trusts declared by the said indenture of the —— day of —— of the said term of one thousand years, shall be the primary fund for the maintenance and education of

Power to the wife to control the management of the trustees.

Trustees not to exercise rights of sporting, or to sell game or fish.

Trusts of jointure and portions terms;

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

the child or children for whose maintenance and education the same is provided:" *Powers of jointuring; of charging portions; of leasing; enfranchising; and sale and exchange, supra, pp.* 520—546; *Covenant to surrender copyholds, supra, p.* 546]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, the said hereditaments and premises by the several hereinbefore-recited indentures of the —— day of —— and the —— day of ——, respectively, demised, or expressed and intended so to be, with their respective rights, easements, and appurtenances; AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD the said hereditaments, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for all the residue now to come respectively of the said several terms of twenty-one years and twenty-one years respectively, at the rents, nevertheless, and subject to the covenants, conditions, and agreements in and by the said indentures of the —— day of —— and the —— day of —— respectively reserved and contained on the part of the lessee, his executors, administrators, and assigns, to be paid, observed, and performed; NEVERTHELESS, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained, or referred to, of and concerning the same, that is to say, UPON TRUST that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, by and out of the rents and profits of the same premises, from time to time pay the rents and payments reserved and made payable in and by the said indentures of the —— day of —— and the —— day of —— respectively, and, subject thereto, do and shall from time to time, when and as they or he shall think proper, renew, or endeavour to renew, the leases thereof respectively for the time being, and for that purpose do and shall from time

Witnesseth further, assignment of the leaseholds.

Habendum to the trustees of the seventy years' term;

—upon trusts,

—to pay the rents and obtain renewals;

to time make such surrender of the leases of the said premises respectively as for the time being shall be necessary in that behalf, And do and shall, by and out of the rents and profits of the same leasehold premises respectively, or by mortgage thereof, or of any part thereof, respectively, raise so much money as shall be sufficient for paying the fines and other necessary charges for such renewals thereof respectively (*b*); And it is hereby agreed and declared, that the receipt or receipts in writing of the said trustees or trustee for the time being, for the money so to be raised as last aforesaid, shall effectually discharge the person or persons paying the same, his or their executors or administrators, from seeing to the application thereof, or to the necessity or propriety of the same being raised; AND IT IS HEREBY AGREED and declared, that the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said hereditaments and premises hereinbefore assigned, or expressed and intended so to be, during all the terms or estates now subsisting therein respectively under the said subsisting leases thereof respectively, or to be granted thereof respectively by every or any such renewed lease as aforesaid, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as shall and may as nearly correspond with, and be similar to, the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations hereinbefore limited, declared, and contained of and concerning the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, as the different natures and qualities of the same several estates, and the rules of law and equity, will permit, yet so that the same leasehold premises shall not, for the effect or purpose of transmission, vest absolutely in any son of the said A. B. and C. D. who shall not attain the age of twenty-one years (*c*): PROVIDED

—and hold upon trusts to correspond with the limitations of the freehold.

Trustees not to

(*b*) See supra, p. 350, n. (*g*); see too supra, p. 347, n. (*f*).

(*c*) See supra, p. 543, n. (*o*).

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

be liable for neglecting to renew the leases.

ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the said E. F. and G. H., or either of them, their or either of their executors, administrators, or assigns, shall not be personally answerable for any neglect or laches in not effecting any such renewal or renewals of the said leases respectively as are hereinbefore respectively directed to be effected, unless notice by the person or persons for the time being beneficially interested in the same premises shall be given to them or him, requiring them or him to endeavour to obtain such renewal or renewals, and the person or persons so for the time being beneficially interested as aforesaid shall advance or cause to be advanced, to them or him a sufficient sum of money for effecting such renewal or renewals.

Witnesseth further, assignment of shares.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, ALL THOSE twenty shares in the —— and ——, and numbered respectively ——; and also all those sixteen shares in the ——, and numbered respectively ——; and also all those two hundred and forty shares in the ——, and numbered respectively ——; and also all those two sums of —— and —— of the capital stock of the —— Company, now standing in the name of the said A. B. in the books of the same company (*d*); And all the dividends and proceeds to become payable on or in respect of the same shares, stock, and premises respectively, and every part thereof respectively;

Habendum to

AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD

Voluntary settlement not aided by equity.

(*d*) These shares ought to be transferred into the names of the trustees. If a settlement be merely voluntary, a court of equity will not aid in carrying it into effect; (*Edwards* v. *Jones*, 1 My. & C. 226; *S. C.* 7 Sim. 325, and the cases there cited; *Wheatley* v. *Parr*, 1 Kee. 551; *Colyear* v. *The Countess of Mulgrave*, 2 Kee. 81; *Tuffnell* v. *Constable*, 8 Sim. 69; *Ward* v. *Audland*, 1 C. P. Cooper, 146).

If, however, the shares cannot conveniently be transferred, notice of the assignment should be given to the Companies of which they are held. See ante, Vol. 3, p. 374, n. (*f*), and p. 375.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

the said shares and stock, and all and singular other the premises lastly hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained, or referred to, of and concerning the same, that is to say, UPON TRUST that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall at any time or times, with the consent in writing of the said A. B. during his life, and after his decease, at the discretion of the said trustees or trustee for the time being, sell and dispose of the same shares and stock respectively, or any of them, or any part or parts thereof respectively, for such price or prices as they or he shall think fit; And do and shall, with such consent or at such discretion as aforesaid, lay out and invest the money to arise by or from every such sale or disposition, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland; And do and shall from time to time (with such consent or at such discretion as aforesaid) alter, vary, and transpose the same stocks, funds, and securities as they or he shall think fit; AND DO AND SHALL stand and be possessed of and interested in the said shares and stock respectively, and the monies which shall arise by any such sale or disposition of the same respectively, or any part or parts thereof respectively, as aforesaid, and the stocks, funds, and securities in or upon which the same shall be laid out or invested, and the dividends, interest, and annual produce thereof respectively, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained of and concerning the same respectively, (that is to say), UPON TRUST that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall

the trustees of the seventy years' terms upon trusts;

—for varying the securities;

—and for payment of the portions to be raised under the trusts of the portions terms.

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

during the life of the said A. B. pay the dividends, interest, and annual proceeds of the same shares and stock respectively, and of the monies which shall have arisen from any such sale or disposition as last aforesaid, and the stocks, funds, or securities in or upon which the same shall be laid out or invested, or of so much and such part thereof respectively as for the time being shall not have been applied or disposed of under the trusts hereinafter declared, unto the said A. B. or his assigns, for his or their own use and benefit; And upon further trust from time to time, (as well during the life of the said A. B. as after his decease), when, and so soon, and as often as any sum of money shall become raisable under the trusts of the said term of one thousand five hundred years of the said sum of £—— provided for portions as hereinbefore is mentioned, by selling, calling in, or disposing of the same shares and stocks, or other trust monies, stocks, funds, and securities, or any part or parts thereof, to levy and raise, and pay, discharge, and satisfy, (so far as the same trust fund for the time being remaining unapplied shall be sufficient in that behalf), the money which shall have so become raisable under the trusts of the said term of one thousand five hundred years; And upon further trust, from time to time, after the decease of the said A. B., to apply the dividends, interest, and proceeds of the same shares and stock, or other trust monies, stocks, funds, and securities, in or towards payment of any annual sum or sums of money which from time to time shall be raisable under the trusts of the said term of one thousand five hundred years, for the maintenance and education of any child or children of the said A. B. by the said C. D., and to accumulate the surplus or residue thereof from time to time, if any, by investing the same and all the resulting income and produce thereof in their or his names or name in or upon any such stocks, funds, or securities as aforesaid, to be held and applied upon the same trusts as are herein declared of the original principal fund, To the end and intent that, so far as the same shares and stock, or other trust monies, stocks, funds, and securities, and the dividends, interest, and proceeds thereof, will extend, the same may be applied

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

in exoneration of the said hereditaments and premises comprised in the said term of one thousand five hundred years from the payment of all sums of money, whether annual or in gross, which shall become raisable under the trusts of the said term of one thousand five hundred years; AND IT IS HEREBY AGREED and declared, that, subject to the trusts hereinbefore declared of the said shares and stock and other trust premises, the said E. F. and G. H., their executors, administrators, and assigns, shall stand and be possessed of the same and every part thereof, In trust for the said A. B., his executors, administrators, and assigns: AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, by these presents, that he the said A. B., his executors or administrators, shall and will, immediately after the execution of these presents, at his or their own costs and charges, cause and procure the said shares and stock hereinbefore assigned, or expressed and intended so to be, to be properly transferred into the names of the said E. F. and G. H. in the respective books of the said several companies (*e*). AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in order the better to enable the said E. F. and G. H., their executors, administrators, or assigns, to work the mines and quarries now worked by the said A. B. under the lands hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part thereof, he the said A. B. hath assigned, and by these presents doth assign, unto the said E. F. and G. H., their executors, administrators, and assigns, ALL AND SINGULAR the railway carriages, steam engines, waggons, machines, and other moveable articles, horses, and cattle, and other dead and live stock, now used in or about the working the mines lying and being under any of the said lands hereinbefore granted and released, or expressed and intended so to be: TO HAVE AND TO HOLD all and singular the premises lastly herein-

—and, subject thereto, in trust for the settlor.

Covenant by the settlor to transfer the shares.

Witnesseth further, assignment of machinery and stock.

Habendum to the trustees of the 70 years

(*e*) See supra, p. 602, n. (*d*).

OF REAL ESTATE, LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

before assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, nevertheless upon the trusts and for the intents and purposes hereinafter expressed and declared or referred to, of and concerning the same, that is to say, UPON TRUST, during the joint lives of the said A. B. and C. D., when and as occasion shall require, to cause the same to be repaired and replaced, with power to defray all expenses attendant thereupon out of the produce of the working of the said mines, or other the rents, issues, and profits of the said hereditaments and premises comprised in the said term of seventy years, determinable as aforesaid, and upon trust during the same period to use and employ the said premises lastly hereinbefore assigned, or expressed and intended so to be, or permit the same to be used and employed in and for the purpose of working and managing the said mines; AND UPON FURTHER TRUST, from and after the decease of either of them the said A. B. and C. D., to stand possessed of the same premises respectively, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as shall and may as nearly correspond with and be similar to the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations, hereinbefore limited, declared, and contained of and concerning the said hereditaments hereinbefore granted and released, or expressed and intended so to be, as the different natures and qualities of the same, and the rules of law and equity, will permit, yet so that the same shall not, for the effect or purpose of transmission, vest absolutely in any son of the said A. B. by the said C. D. who shall not attain the age of twenty-one years (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that, notwithstanding anything hereinbefore contained, it shall be lawful for the said E. F. and G. H., and the survivor of them, his executors or administrators, in case the power of granting mining leases hereinbefore limited shall be exercised, to sell

term upon trusts;

—for working the mines;

—and to correspond with the trusts of the freeholds.

Power to the trustees in certain events to sell the stock and machinery.

(*f*) See the form, supra, p. 543, and the note (*o*).

and dispose of, either by public auction or private contract, or partly by public auction, and partly by private contract, all the railway carriages and other moveable articles and effects, horses, and cattle, and other stock, which shall be used in and about the working and managing of the mines which shall be so let, or such part of the same articles, effects, and stock as shall not, at their or his discretion, be required for the working of any other of the mines then worked and managed, or about to be worked and managed, by them or him under the power in that behalf hereinbefore contained, for the best price or prices that can be reasonably had or gotten for the same: AND IT IS HEREBY AGREED and declared, that the monies to be produced by such sale or sales shall be held by the said trustees or trustee for the time being, or their or his executors, administrators, or assigns, upon the same trusts, and for the same intents and purposes, and with, under, and subject to the same powers, provisoes, agreements, and declarations as are hereinbefore declared, expressed, and contained of and concerning the monies to arise by any sale or sales which shall be made under the power hereinbefore contained of selling the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be: [*Trustees' receipt clause, supra, p. 352*; *Power of appointing new trustees, supra, p. 548*; *Clause for the indemnity of trustees, supra, p. 550, adding the following words:* "and that any one or more of them shall not be answerable or accountable for the acts, neglect, or default of any manager, agent, steward, viewer, receiver, bailiff, workmen, or other person appointed by them or him in pursuance of the authority in that behalf hereinbefore contained;" *Clause for the payment of trustees' expenses, supra, p. 551*]: PROVIDED ALWAYS, and it is hereby further declared, that it shall be lawful for the said A. B. and the said C. D., from time to time and at any time or times during their joint lives, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them in the presence of, and to be attested by, two or more credible witnesses, and, after the decease of the said C. D., to and for the said A. B., from time to time

OF REAL ESTATE, LEASES, MINES AND MACHINERY, AND SHARES IN COMPANIES.

Trusts of the money arising from the sale.

Trustee clauses.

Powers of revocation.

OF REAL ESTATE LEASES, MINES, AND MACHINERY, AND SHARES IN COMPANIES.

and at any time or times during his life, with the consent in writing of the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, by any deed or deeds, or instrument or instruments in writing, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, (but without prejudice to any previous exercise of any of the powers hereinbefore contained), to alter, vary, revoke, determine, or make void, all and every or any of the uses, estates, trusts, and limitations hereinbefore limited and declared of and concerning the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, or any of them, or any part or parts thereof, and all and every or any of the trusts hereinbefore declared of and concerning all or any of the copyhold and leasehold hereditaments, shares, stock, personal chattels, and premises hereinbefore covenanted to be surrendered and assigned, or expressed and intended so to be, respectively, and by the same or any other deed or deeds, or instrument or instruments in writing, to declare any new or other use or uses, estate or estates, trust or trusts, power or powers, of and concerning the hereditaments, shares, stock, personal chattels, and premises, the uses or trusts whereof respectively shall be so altered, varied, revoked, determined, or made void as aforesaid, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. IN WITNESS &c.

XXIII.

STRICT SETTLEMENT (a) *in favour of the Settlor, his Sons and Daughters*—NAME *and* ARMS *Clause*—POWER *to* CHARGE *a* GROSS SUM *of Money*—POWERS *of* JOINTURING *and* CHARGING PORTIONS—POWER *of* LEASING—POWERS *of* PARTITION—ENFRANCHISEMENT, *and* SALE *and* EXCHANGE—TRUSTS *of Monies raisable under a Term of Years, and of other Monies for the payment of Incumbrances and Annual Sums*—SETTLEMENT *of* CHATTELS *as* HEIR-LOOMS—PROVISO *that an Annuity shall be paid after any attempt at Alienation for the* MAINTENANCE *of the Annuitant or his Wife and Children*—POWER *to* BORROW *Money under the Trusts of a Term*—*to* DEPOSIT *Monies at* BANKERS'—*or to Invest*—*to* COMPOUND *with Incumbrancers, and submit to* ARBITRATION—POWERS *and Trusts for the* MANAGEMENT *of Estates*—ASSIGNMENT *of, and* POWER OF ATTORNEY *to collect, Rents already due*—PROVISO *that Creditors shall gain no fresh Lien*—SPECIAL *Trustees' Receipt Clauses*—PROVISO *that* ATTORNIES *being* TRUSTEES *shall be paid their* PROFESSIONAL CHARGES.

STRICT SETTLEMENT.

THIS INDENTURE, made &c., BETWEEN A. B. of &c., [*settlor*], of the first part; C. B. of the same place,

Parties.

(a) What is meant by the term "strict settlement," does not seem to be very accurately defined in the text books. The expression, indeed, seems to be applied to several varieties of settlement; but, perhaps, the essential notion of a strict settlement is, that it should contain a limitation to, at least, one person for life, with remainder to trustees during

"Strict settlement"—meaning of the term.

STRICT SETTLEMENT.

esquire, the eldest son, and heir apparent of the said A. B., of the second part; the said C. B., E. F., of &c., and

---

his life, to preserve contingent remainders, with remainder to his first and other sons successively in tail male or in tail, with a remainder or remainders over, disposing of the reversion expectant on such prior estates. (See Precedent XVI., supra, pp. 501, 505). Such a settlement generally contains a limitation of a jointure to the wife of the tenant for life, and of powers, and a term for securing it, and of a term for raising portions for the younger children of the settlor, as in Precedent XVI., supra. It usually contains, too, a variety of powers for managing and dealing with the estate, and sometimes for creating annual and gross charges; but none of these limitations or powers seem essential to a strict settlement. The Precedent in the text contains a complex series of limitations to the settlor and his issue, male and female, and answers, perhaps, completely to the popular notion of a strict settlement. But all the limitations, except those in favour of the settlor and his eldest son, and the issue male of that son, might be taken away, without destroying the character of the settlement.

How instructions for a strict settlement are to be carried into effect.

If, however, instructions are given to settle an estate in strict settlement on certain persons and their issue, the conveyancer should carry his instructions into effect, by limiting a life estate to the first person named, with remainder to his first and other sons in tail male, remainder to the second person named for his life, remainder to his first and other sons in tail male, and so on through the whole of the persons named, interposing, of course, proper limitations to the trustees after each estate for life to preserve contingent remainders. Then will follow a series of limitations in tail general to the first and other sons of the successive tenants for life; and afterwards, a series of limitations to the first and other daughters of the successive tenants for life in tail male and in tail general, or in tail general only, with such remainders over as may be deemed advisable, including an ultimate remainder in fee. This species of settlement probably proceeds or originated from the idea that there is or may be a title in the family, which is descendible in the male line, and which it is desirable should be accompanied by the property, so long as it endures. But if there should be a title descendible in the female as well as in the male line, it is obvious that the arrangement of the limitations must be different; for the whole issue of every prior tenant for life must be exhausted before any subsequent tenant for life, and his issue, can be permitted to take.

The settlement in the text was not that of a titled family; but still the preference is given to the male line, with certain variations, occasioned by the situation of the parties.

Jointures and portions are from their nature limited only in pursuance of express instructions; but when instructions for a strict settlement are

STRICT SETTLEMENT.

G. H., of &c., [*trustees of a term*], of the third part; I. K., of &c., and L. M., of &c., of the fourth part; and N. O., of &c., and P. Q., of &c., [*trustees to preserve contingent remainders and donees of the powers*], of the fifth part: [*Recitals, shewing that, subject to a number of charges and incumbrances specified in schedules to the settlement, the hereditaments to be settled, and other hereditaments, stand limited to such uses as A. B. and C. B. shall appoint, and in default of appointment to A. B. for life, with remainder to C. B. in fee: Recitals of a conveyance of even date, whereby the other hereditaments referred to were vested in C. B., E. F., and G. H., in trust to sell and hold the proceeds on trusts to be declared by the present settlement; see the mode of reference, supra, p. 362*]. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, they the said A. B. and C. B., pursuant to, and by force and virtue and in exercise and execution of, the power or authority to them for this purpose given by the hereinbefore recited indenture of the —— day of ——, so far as the same is subsisting, and of every or any other power or authority whatsoever in anywise enabling them or either of them, jointly or severally (*b*), in this behalf, do by this deed or writing sealed and delivered by them respectively, in the presence of the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting the sealing and delivery hereof by the said A. B. and C. D., direct, limit, and appoint; THAT such and so many of the manors, lands, and hereditaments hereinafter released, or expressed and intended so to be, with

Recitals shewing the title of the settlor.

Witnesseth appointment of part of the hereditaments.

Parcels.

---

to be carried out, powers of jointuring must be given to the different male tenants for life, and powers of charging portions for their younger children to all the tenants for life. The female tenants for life, too, should have powers of appointing rent-charges in the nature of jointures to husbands. These last powers are not in the Precedent in the text, but an example of them will be found in a settlement by will in the next volume. The ordinary powers of leasing and of enfranchisement, and of sale and exchange, must, of course, be inserted.

(*b*) The language of the reference to the power is rather peculiar in this case. See ante, Vol. 3, p. 211, n. (*e*).

STRICT SETTLEMENT.

their rights, members, easements, and appurtenances, as are comprised and described in the second schedule to these presents, shall henceforth go, remain, and be, To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter declared, expressed, and contained of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, they the said A. B. and C. B., according to their respective estates and interests, have, and each of them hath granted, released, and confirmed, and by these presents do, and each of them doth grant, release, and confirm unto the said E. F. and G. H., (in their actual possession now being, by virtue of a bargain and sale to them thereof made by the said A. B. and C. B., in consideration of five shillings a-piece, by indenture &c., *ante, Vol.* 3, *p.* 198), and to their heirs, ALL and singular the manors, lands, and hereditaments described or mentioned in the second and fourth schedules to these presents [*general words*]: To HAVE AND TO HOLD the said manors, lands, and hereditaments, and all and singular other the premises hereby released, or expressed and intended so to be, unto the said E. F. and G. H., and their heirs, To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the direction, limitation, and appointment, and also the grant, release, and confirmation hereinbefore contained, shall severally operate and enure To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same, (that is to say), To THE USE of the said C. B., E. F., and G. H., their executors, administrators, and assigns, for and during the term of nine hundred years, to commence from the day of the date of these presents, without impeachment of waste, UPON AND FOR THE TRUSTS, intents, and purposes, and subject to the proviso hereinafter expressed

To the uses of the settlement.

Witnesseth further, grant and release of all the property.

Parcels.

Habendum.

To uses.

Declaration of uses.

Limitations to the use of trustees for a term of 900 years, upon trusts to be subsequently declared;

STRICT SETTLEMENT.

and contained of and concerning the same; AND IMMEDIATELY from and after the expiration or sooner determination of the said term of nine hundred years, and in the meantime subject thereto and to the trusts thereof, To THE USE of the said A. B. and his assigns during his life, without impeachment of waste, except wilful or permissive waste, in disparking lands, or in pulling down houses, or suffering the same to run into decay (*c*); AND immediately from and after the determination of that estate by forfeiture or otherwise in his lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said A. B., IN TRUST to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall require, But, nevertheless, to permit the said A. B. and his assigns to have, receive, and take the rents, issues, and profits of the said hereditaments and premises during his life for his and their own use and benefit; AND IMMEDIATELY from and after the decease of the said A. B., To SUCH USES, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said C. B. shall, at any time or times after the decease of the said A. B., by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence

—and, subject thereto,

—to the use of settlor for life, subject to restrictions as to waste;

—remainder to trustees during his life to preserve contingent remainders;

—remainder to such uses as the settlor's eldest son shall appoint;

(*c*) Wilful or voluntary waste consists chiefly in felling timber, pulling down houses, opening mines or pits, changing the course of husbandry, and destroying heir-looms. Permissive waste consists chiefly in allowing houses to go to decay. (See 1 Cru. Dig., by White, Tit. III. ch. ii.; Co. Lit. 53. a. et seq.). It has been held, that a tenant for life, "without impeachment of waste other than wilful waste," is entitled to the interest of money produced by the sale of decaying timber cut by order of the Court. *Wickham* v. *Wickham*, 19 Ves. 419; *S. C.* Geo. Coop. 288; see, however, *Garth* v. *Cotton*, Dick. 183; *S. C.* 1 Ves. sen. 524, where the tenant for life was prohibited from committing "voluntary waste." A tenant for life, without impeachment of waste, will be restrained from malicious or injurious waste. (See the cases cited in Cru. Dig. ubi supra, sect. 59 et seq., and the recent case of *Wellesley* v. *Wellesley*, 6 Sim. 497).

Waste, what is.

Wilful or voluntary waste by tenant for life.

STRICT SETTLEMENT.

of, and to be attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, direct, limit, or appoint; AND IN DEFAULT of and until such direction, limitation, or appointment, and so far as no such direction, limitation, or appointment shall extend, To THE USE of the said I. K. and L. M., their executors, administrators, and assigns, for the term of one day, determinable as hereinafter mentioned (*d*), in order to prevent the said term of nine hundred years hereinbefore limited to the said C. B., E. F., and G. H., their executors, administrators, and assigns, from being merged and extinguished in the freehold next hereinafter limited to him the said C. B.; AND FROM AND AFTER the expiration or other sooner determination of the said term of one day, and in the meantime subject thereto, To THE USE of the said C. B. and his assigns during his life, without impeachment of waste; AND IMMEDIATELY from and after the determination of that estate by forfeiture or otherwise in his lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said C. B., [*in trust to preserve contingent remainders, supra, p.* 613]; AND IMMEDIATELY after the decease of the said C. B., To THE USE of the first and other sons of the said C. B., lawfully to be begotten, severally, successively, and in remainder, one after another, in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs male of the body and respective bodies of all and every such son and sons issuing, the elder of such sons and the heirs male of his body issuing being always to take before and be preferred to the younger of such sons and the heirs male of his and their body and respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the first and other sons of the said C. B., lawfully to be begotten, severally, suc-

—and, subject thereto, to the use of trustees for one day to prevent a merger;

—and, subject thereto, to the use of settlor's eldest son for life;

—remainder to trustees to preserve;

—remainder to his first and other sons successively in tail male;

—remainder to his first and other sons successively in tail general;

Merger of terms.

(*d*) If this limitation were wanting, the third part of C. B. in the term of nine hundred years would, perhaps, on the death of A. B., merge in the life estate of C. B. See Burton's Law of Real Property, arts. 748 et seq., and 900.

STRICT SETTLEMENT.

cessively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such son and sons issuing, the eldest of such sons and the heirs of his body issuing being always to take before and be preferred to the younger of such sons and the heirs of his and their body and respective bodies issuing (*e*), AND IN DEFAULT of such issue, TO THE USE of the first and other daughters of the said C. B. lawfully to be begotten, severally, successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such daughter and daughters issuing, the elder of such daughters and the heirs of her body issuing being always to take before and be preferred to the younger of such daughters and the heirs of her and their body and respective bodies issuing, AND IN DEFAULT of such issue, TO THE USE of the said D. B., [*the second son of A. B.*], and his assigns during his life, subject to impeachment for waste (*f*), AND IMMEDIATELY from and after the determination of that estate by for-

—remainder to his first and other daughters successively in tail general;

—remainder to the second son of the settlor for life, with impeachment of waste;

—remainder to trustees to preserve;

(*e*) This and the succeeding limitation should be postponed to the limitations to the second son and his male issue, and to that to the after-born sons of the settlor in tail male; but the variation from the regular order of the limitations, as well as the introduction of the power of appointment previously limited to the eldest son, arose from the fact, that the concurrence of the eldest son in making the settlement was indispensable.

Order of limitations in strict settlement.

(*f*) The expression "subject to impeachment for waste" is added from abundant caution; for a tenant for life may not commit waste, unless his estate is expressly limited without impeachment of waste. With respect to waste by tenants for life, see 1 Cru. Dig. by White, Tit. III. chap. ii.; Co. Litt. 53. a. et seq., supra, p. 613, n. (*c*). It is waste for a tenant for life to change meadow into arable land, or the like. (Cru. Dig. ubi supra, pp. 18, 19; supra, p. 50. n. One of the most important distinctions between a tenant for life simply, and a tenant for life without impeachment of waste, is, that the latter alone has the power to fell timber for sale. But if there be a tenant for life, subject to impeachment for waste, timber which has arrived at maturity, or is decaying, or which ought to be cut for the purpose of thinning woods, may be cut and sold under the direction of the Court of Chancery or by competent trustees. (*Tooker* v. *Annesley*, 5 Sim. 235; *Waldo* v. *Waldo*, 7 Sim. 261). The

Waste by a tenant for life.

STRICT SETTLEMENT.

feiture or otherwise in his lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said D. B., In trust to preserve the contingent remainders, &c. [*supra, p.* 613, *remainder to the first and other sons of D. B. in tail male, supra, p.* 614], AND IN DEFAULT of such issue, To THE USE of the third and other subsequently born sons of the said A. B., lawfully to be begotten, severally, successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs male of the body and respective bodies of all and every such sons and son issuing, the elder of such sons and the heirs male of his body issuing being always to take before and be preferred to the younger of such sons and the heirs male of his and their body and respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the first and other sons of the said D. B. [*in tail general—remainder to his first and other daughters in tail general, as in the case of C. B., supra, p.* 615], AND IN DEFAULT of such issue, To THE USE of the third and other subsequently born sons of the said A. B., lawfully to be begotten, severally, successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such son and sons issuing, the elder of such sons and the heirs of his body issuing being always to take before and be preferred to the younger of such sons and the heirs of his and their body and respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the said E. B., [*eldest daughter of A. B.*], and her assigns during her life, subject to impeachment for waste, AND IMMEDIATELY from and after the determination of that estate, by forfeiture or otherwise, in her lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said E. B., IN TRUST

—remainder to his sons in tail male;

—remainder to the third and other after-born sons of the settlor successively in tail male;

—remainder in tail general to the sons and daughters successively of the second son;

—remainder to the third and other after-born sons of the settlor successively in tail general;

—remainder to the eldest daughter of the settlor for life,

—with remainders over;

---

purchase-money is to be laid out in land to be settled to the same uses as those of the old estate; and the tenant for life will be entitled for life to the interest of the purchase-money, or the rents of the land in the purchase of which it may be invested. Id.; and *Wickham* v. *Wickham*, 19 Ves. 419.

STRICT SETTLEMENT.

to preserve the contingent remainders, [*supra, p.* 613, *remainder to the first and other sons of E. B. in tail male and in tail general, and to her first and other daughters in tail general, as in the case of C. B., supra, pp.* 614, 615, *with similar remainders to F. B., another daughter of A. B., and to trustees for her life, and to her sons and daughters in tail male and tail general, as before, with similar remainders to and for G. B., another daughter of A. B., and her sons and daughters*], AND IN DEFAULT of such issue, TO THE USE of the fourth and other subsequently-born daughters of the said A. B., lawfully to be begotten, severally, and successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such daughter and daughters issuing, the elder of such daughters and the heirs of her body issuing being always to take before and be preferred to the younger of such daughters and the heirs of her and their body and respective bodies issuing, AND IN DEFAULT of such issue, TO THE USE of the said C. B., his heirs and assigns for ever: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that every person, who, under or by virtue of the limitations hereinbefore contained, or of this proviso (*g*), shall become entitled to the actual possession or to the receipt of the rents and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and who shall not then use and bear the surname and arms of B., shall and do within the space of one year next after he or she shall so become entitled, or, being an infant, then within the space of one year after he or she shall attain the age of twenty-one years, and also that every person, whom any person so becoming entitled shall marry, shall and do within the space of one year after such female shall so be-

—remainder to the fourth and other after-born daughters of the settlor successively in tail general;

—remainder to the settlor in fee.

Proviso that every person taking the estate, and who does not bear the name and arms of the settlor, shall thenceforth bear the same,

(*g*) If the settlement be intended to contain shifting clauses, add "or of any proviso herein contained." Or, perhaps, it might be better to substitute for the expression in the text "under or by virtue of these presents."

Reference to shifting clauses.

STRICT SETTLEMENT.

come entitled, or shall so marry, whichever of such events shall last happen, unless in the said respective cases any such person shall be prevented by death, take upon himself or herself, and use in all deeds, letters, accounts, and writings whereunto or wherein he or she shall be a party, or which he or she shall sign, and upon all other occasions, the surname of B. together with his or her own family surname, and also quarter the arms of B. with his or her own family arms, and within the said space of one year (unless prevented by death) apply for and endeavour to obtain an act of Parliament or proper license from the crown, or take such other steps or means as may be requisite and proper to enable or authorize him or her so to take, use, and bear the said surname and arms of B.; AND FURTHER, that in case any such person shall so refuse or neglect within the said space of one year to take, use, and bear such surname and arms, and to take such steps or means as aforesaid, or shall at any time afterwards discontinue to use and bear such surname or arms, THEN and in every such case, immediately after the expiration of the said term of one year, or immediately after such discontinuance as aforesaid, (as the case may be), if the person who, or whose husband, shall so for the time being refuse, neglect, or discontinue as aforesaid, shall be, either by himself or herself, or together with her husband, tenant for life, the limitation hereinbefore contained to the use of such person and his or her assigns during his or her life, shall absolutely cease and determine, and be void, and if the person who, or whose husband, shall so for the time being refuse, neglect, or discontinue as aforesaid, shall be tenant in tail male or in tail, then the limitations under which such person shall be so tenant in tail male or in tail, shall absolutely cease, determine, and be void, and in the said respective cases the said hereditaments and premises hereinbefore released, or expressed and intended so to be, shall immediately go to the person or persons next in remainder under the limitations herein contained, precisely in the same manner as if such person, being such tenant for life, were actually dead, or, being such tenant in tail male or in tail, were actually dead, and there were a general

—or forfeit the estate.

STRICT SETTLEMENT.

failure of issue inheritable under such limitations in tail male or in tail respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that the cesser or determination under the proviso lastly hereinbefore contained of the estate hereinbefore limited to any person who, or whose husband, shall so for the time being refuse, neglect, or discontinue as aforesaid, and who shall be tenant for life under the aforesaid limitations, shall not in anywise prejudice or affect any of the contingent remainders hereinbefore limited to his or her son or sons, daughter or daughters, or any other person or persons, but from and after such cesser or determination as aforesaid the estate hereinbefore limited to the use of the said N. O. and P. Q. and their heirs, during the life of such person, shall take effect and continue for preserving such contingent remainders, and the said N. O. and P. Q., their heirs and assigns, shall thenceforth from time to time during the life of the person who, or whose husband, shall so for the time being refuse, or neglect, or discontinue as aforesaid, pay the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, to, or permit the same to be received by the person or persons for the time being entitled, under the limitations hereinbefore contained, to the first vested estate in remainder expectant on the decease of such person as aforesaid, for his or their own use and benefit(*h*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said D. B., in case, under or by virtue of the limitations hereinbefore contained, he shall immediately upon the decease of the said A. B. become entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and in-

Proviso that the forfeiture of a life estate shall not destroy contingent remainders.

Power to the second son of the settlor to charge (in certain events) a gross sum of money for his own benefit.

(*h*) Other forms of these clauses as to taking a name and arms will be found in the settlements by will in the next volume. See also a form of these clauses, and the observations of Mr. Butler. Harg. & Butl. Co. Lit. 327. a., n. 2, II. 2, 3.

Name and Arms clause.

STRICT SETTLEMENT.

tended so to be, but not otherwise, at any time or times after such decease, but subject and without prejudice to the said term of nine hundred years hereby created, and the trusts thereof, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be sealed and delivered by him in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, to charge all or any part of the said hereditaments and premises with the payment to him the said D. B., or to any other person or persons, at such times and for such purposes, and in such manner in all respects, as the said D. B. shall think proper, of any sum or sums of money, not exceeding in the whole the sum of £——, together with interest for the same after the rate of —*l.* per cent. per annum, to be computed from the decease of the said A. B., and to appoint the premises so to be charged to any person or persons for any term or terms of years, without impeachment of waste, upon trusts for raising the sum or sums so to be charged, and the interest thereof, and with a proviso for the cesser of such term or terms upon the trusts being performed, or becoming unnecessary or incapable of taking effect: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for each of them the said C. B. and D. B., at any time or times, either before or after he shall be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and either before or after marriage, but subject and without prejudice to the uses preceding the estate of the person for the time exercising this present power and the powers annexed to such uses, and the uses which may have been limited in exercise of such powers by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil

Power to the successive male tenants for life of jointuring;

STRICT SETTLEMENT.

thereto, to limit or appoint to any woman or women respectively whom the person for the time being exercising this present power shall or may marry, for her or their life or lives, and for her or their jointure or respective jointures, and either in bar or without being in bar of her or their dower or freebench, any annual sum or sums of money, yearly rent-charge or yearly rent-charges, not exceeding in the whole, in respect of each woman, the yearly sum of £——, to be issuing and payable out of and charged and chargeable upon all or any part of the said hereditaments and premises, clear of all taxes, deductions, and outgoings whatsoever, and to be paid in such manner as to the person for the time being exercising this present power shall seem meet; AND for the purpose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, so to be appointed as aforesaid, to limit or appoint to the woman or women respectively to whom the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, shall be so appointed as aforesaid, usual powers and remedies for enforcing and recovering payment thereof by distress and entry upon, and perception of the rents, issues, and profits of the said hereditaments and premises so to be charged with the said annual sum or sums, yearly rent-charge or rent-charges; AND ALSO to limit or appoint the hereditaments and premises so to be charged as aforesaid, to any person or persons whomsoever, for any term or terms of years, without impeachment of waste, as a further security for the payment of the said annual sum or annual sums, or yearly rent-charge or yearly rent-charges, but so that every such term or terms of years be made to determine on the death of the woman or women for the benefit of whom the same shall be created, and the payment of the arrears, if any, of her or their annual sum or sums, rent-charge or respective charges, and the expenses, if any, incurred by the nonpayment thereof(*i*): PROVIDED ALWAYS, and it is hereby agreed and

—including the power to limit usual powers and remedies;

—and terms of years for securing the jointures.

Power to the

(*i*) With respect to powers of jointuring, see supra, p. 521, n. (*w*). See, too, the somewhat different form of the power, supra, p. 520. As

Powers of jointuring and

STRICT SETTLEMENT.

successive tenants for life to charge portions for younger children;

declared between and by the parties to these presents, that it shall be lawful for each of them the said C. B., D. B., E. B., F. B., and G. B., at any time or times, either before or after he or she shall be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and either before or after marriage, (but subject and without prejudice to the uses preceding the estate of the person for the time being exercising this present power, and the powers annexed to such uses, and the uses which may have been limited in exercise of such powers), by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him or her sealed and delivered, in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil thereto, to charge all or any part of the said hereditaments and premises to and with the payment of any sum or sums of money for the portion or portions of the child or children of the person for the time being exercising this present power, (other than or besides an eldest or only son or daughter for the time being entitled to the said hereditaments and premises for an estate in tail male, or in tail, in possession, or in reversion expectant on the decease of such person), not exceeding in the whole the sum of money hereinafter for each case mentioned, (that is to say), if one such child the sum of £——, for his or her portion, if two such children and no more, then the sum of £—— for the portions or portion of such two children or either of them; and if three or more such children, then the sum of £—— for the portions or portion of such three or more children, or any of them, with interest thereon, at any rate not exceeding —*l.* per cent. per annum, such sums of £——, £——, or £——, as the case may be, to be an interest or interests vested in, and to be

---

granting rent-charges to husbands.

observed supra, p. 611, it would be proper to give the female tenants for life powers of appointing rent-charges to their husbands; see the form of such a power in a settlement by will in the next volume.

STRICT SETTLEMENT.

shared and divided between or among, or to be applied for the benefit of all and every, or any one or more exclusively of the other or others of such children or child, at such age, day, or time, or respective ages, days, or times, and, if more than one, in such parts, shares, and proportions, and with, under, and subject to such provisions for their maintenance, education and advancement, and benefit, and charged with such annual sum or sums of money, and with such conditions, restrictions, and limitations over, (such annual sum or sums of money and limitations over being for the benefit of some or one of such child or children), and in such manner as the person for the time being exercising this present power shall, by any deed or deeds, instrument or instruments in writing, so sealed and delivered, and so attested as aforesaid, or by his or her last will and testament in writing, or any codicil or codicils thereto, direct or appoint; AND THAT it shall be lawful for the person for the time being exercising this present power, by the same or any other deed or deeds, instrument or instruments in writing, so sealed and delivered, and attested as aforesaid, or by such last will and testament in writing, or any codicil thereto, to limit or appoint the hereditaments and premises so to be charged as lastly hereinbefore is mentioned, to any person or persons, for any term or terms of years, without impeachment of waste, upon trust to raise the money so to be charged, with a proviso for the cesser of such term or terms, on the trusts thereof being performed, or becoming unnecessary or incapable of taking effect (*k*): PROVIDED ALWAYS, that the said hereditaments and premises, or any part thereof, shall not, by virtue of the said last-mentioned power, be at any one time liable to the payment of more than the principal sum of £——, for portions: PROVIDED ALWAYS, and it is hereby further

—and limit terms for securing the same.

Proviso limiting the total amount of portions to be charged at one time.

Jointures and

(*k*) With respect to powers of charging portions, see supra, p. 524, n. (*x*). The form in the text has been retained, as being more concise than the form of a similar power given supra, pp. 521, 523, but it is inferior in other respects. The form referred to may be readily altered to suit a settlement limiting more than one life estate.

Power of charging portions.

STRICT SETTLEMENT.

portions charged under the powers not to be payable, unless the persons making them, or their issue, become entitled in possession.

agreed and declared between and by the parties to these presents, that neither any jointure nor any portion or portions which may be appointed or charged under the aforesaid powers of jointuring and charging with portions, or either of such powers, nor the interest of such portion or portions, shall become a lien upon the said hereditaments and premises hereinbefore released, or expressed and intended so to be, or any part thereof, or be paid or payable, unless the person so appointing or charging the same respectively, or some or one of his or her issue, shall, under or by virtue of the limitations or provisoes hereinbefore contained, be or become entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that after the decease of the said A. B., and then subject and without prejudice to the trusts hereinafter declared of the said term of nine hundred years hereby created, it shall be lawful for the said C. B., and every other person hereby made tenant for life as aforesaid, as and when, under and by virtue of the limitations hereinbefore contained, he or she shall successively and respectively be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and shall be of the age of twenty-one years, and for the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, at their or his discretion, during the minority of any person who, under or by virtue of the limitations aforesaid, shall for the time being be entitled to the actual possession, or to the receipt of the said rents, issues, and profits, by any deed or deeds, &c. [*power of leasing for twenty-one years, supra, p.* 530, (*l*)]: PROVIDED ALWAYS,

Power of leasing.

Power of partition.

Powers of leasing.

(*l*) The powers of granting mining and building leases, given supra, pp. 524, 532, may be similarly altered to suit a settlement of the nature of that in the text.

STRICT SETTLEMENT.

and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, at any time or times hereafter, at the request of the said A. B. and C. B., during their joint lives, and after the death of either of them, at the request of the survivor of them during his life, (such request being testified by some writing sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses), and after the decease of such survivor, at the request (testified in like manner) of the person who shall for the time being be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and shall be of the age of twenty-one years, but if such person shall be under that age, then at the discretion of the same trustees or trustee for the time being, (but, nevertheless, subject and without prejudice to any mortgage or mortgages, lease or leases, which may have been previously made under the trusts of the said term of nine hundred years hereby created, and to any lease or leases which may have been previously made under the power lastly hereinbefore contained), to join and concur with the person or persons for the time being seised of, or entitled to, any undivided share or shares of and in any of the hereditaments of which only an undivided share or shares is or are hereinbefore released, or expressed and intended so to be, in making a partition of the same hereditaments and premises, or any part thereof, and to give or receive any sum or sums of money for equality of partition (*m*): PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the

Power of enfranchisement and of sale and exchange;

(*m*) In the settlement in the text, the powers necessary to effectuate a partition are given together with those for effectuating a sale or exchange; (infra, p. 626 et seq.); if it were not so, we should need to insert separate powers for the trustees to revoke the old and appoint new uses, and also powers and directions as to the receipt and application of any money which may be received for equality of partition. See infra, p. 627.

Power of partition.

STRICT SETTLEMENT.

parties to these presents, that it shall be lawful for the said N. O. and P. Q., and the survivor of them, and the executors and administrators of such survivor, at any time or times hereafter, at the request of the said A. B. and C. B. during their joint lives, and after the death of either of them, at the request of the survivor of them during his life, (such request being testified by some writing sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses), and after the decease of such survivor, at the request (testified in like manner) of the person who shall for the time being be entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and shall be of the age of twenty-one years (*n*), (but, nevertheless, subject and without prejudice to such mortgage or mortgages, or lease or leases, as last aforesaid), To ENFRANCHISE, for such price or consideration in money as they or he shall think proper, any copyhold or customary tenements held of any of the manors hereby released, or expressed and intended so to be, and to convert the same into hereditaments of a freehold tenure, and so that the same may be held freed and discharged from all customary rents, fines, heriots, and services, and from all customs (*o*); AND ALSO to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other lands, tenements, and hereditaments, to be situate in England or Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, all or any part of the said hereditaments and premises hereinbefore released, or expressed and intended

(*n*) See supra, p. 539, n. (*g*).

Power of enfranchisement.

(*o*) In this case, the powers required for effectuating an enfranchisement are blended with those for effectuating a sale or exchange. But an example will be found supra, p. 534, in which the powers for enfranchising are given separately. The last-mentioned course is, perhaps, the best, because it requires less variation in the accustomed power of sale and exchange. See the references with regard to enfranchisement, supra, p. 525, n. (*c*). See, too, the form of a power to grant licenses to copyholders, supra, p. 539, and see n. (*f*).

STRICT SETTLEMENT.

so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in lands, tenements, or hereditaments, as to the said N. O. and P. Q., or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable, and, upon any such exchange, to give or receive any sum or sums of money for equality of exchange (*p*); AND for the purpose of effecting any such partition, enfranchisement, sale, or exchange as aforesaid, but not for any other purpose, it shall be lawful for the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, at such request as aforesaid, or in respect to any partition, at their or his discretion, (as the case may be), by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, absolutely to revoke, determine, and make void, (but subject and without prejudice as aforesaid), all and every or any of the uses, trusts, powers, provisoes, agreements, and declarations hereinbefore expressed and contained of and concerning the hereditaments and premises so proposed to be sold or exchanged, and the manors of which the tenements so proposed to be enfranchised shall be held, or of any part thereof, and by the same or any other deed or deeds, instrument or instruments in writing, (to be so sealed and delivered, and so attested as aforesaid), to limit, declare, direct, or appoint any other use or uses, trust or trusts, estate or estates of the same hereditaments and premises (*q*): AND THAT the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, shall with all convenient

—and for the purpose of any partition, enfranchisement, sale, or exchange, to revoke the existing and appoint new uses.

Purchase-monies, and monies received on partition, ex-

(*p*) See supra, p. 540, n. (*h*). The clause (supra, p. 540) giving the trustees discretion as to the manner and terms of sale, should be inserted here. See supra, p. 541, n. (*i*).

(*q*) Unless there be a general receipt clause in the settlement embracing the monies paid under the power of sale and exchange, the usual authority for the trustees to give receipts must be inserted here. See supra, p. 542, and the note (*l*).

STRICT SETTLEMENT.

feiture or otherwise in his lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said D. B., In trust to preserve the contingent remainders, &c. [*supra, p.* 613, *remainder to the first and other sons of D. B. in tail male, supra, p.* 614], AND IN DEFAULT of such issue, To THE USE of the third and other subsequently born sons of the said A. B., lawfully to be begotten, severally, successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs male of the body and respective bodies of all and every such sons and son issuing, the elder of such sons and the heirs male of his body issuing being always to take before and be preferred to the younger of such sons and the heirs male of his and their body and respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the first and other sons of the said D. B. [*in tail general—remainder to his first and other daughters in tail general, as in the case of C. B., supra, p.* 615], AND IN DEFAULT of such issue, To THE USE of the third and other subsequently born sons of the said A. B., lawfully to be begotten, severally, successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such son and sons issuing, the elder of such sons and the heirs of his body issuing being always to take before and be preferred to the younger of such sons and the heirs of his and their body and respective bodies issuing, AND IN DEFAULT of such issue, To THE USE of the said E. B., [*eldest daughter of A. B.*], and her assigns during her life, subject to impeachment for waste, AND IMMEDIATELY from and after the determination of that estate, by forfeiture or otherwise, in her lifetime, To THE USE of the said N. O. and P. Q., their heirs and assigns, during the life of the said E. B., IN TRUST

—remainder to his sons in tail male;

—remainder to the third and other after-born sons of the settlor successively in tail male;

—remainder in tail general to the sons and daughters successively of the second son;

—remainder to the third and other after-born sons of the settlor successively in tail general;

—remainder to the eldest daughter of the settlor for life,

—with remainders over;

---

purchase-money is to be laid out in land to be settled to the same uses as those of the old estate; and the tenant for life will be entitled for life to the interest of the purchase-money, or the rents of the land in the purchase of which it may be invested. Id.; and *Wickham* v. *Wickham*, 19 Ves. 419.

STRICT SETTLEMENT.

to preserve the contingent remainders, [*supra, p.* 613, *remainder to the first and other sons of E. B. in tail male and in tail general, and to her first and other daughters in tail general, as in the case of C. B., supra, pp.* 614, 615, *with similar remainders to F. B., another daughter of A. B., and to trustees for her life, and to her sons and daughters in tail male and tail general, as before, with similar remainders to and for G. B., another daughter of A. B., and her sons and daughters*], AND IN DEFAULT of such issue, TO THE USE of the fourth and other subsequently-born daughters of the said A. B., lawfully to be begotten, severally, and successively, and in remainder, one after another in order and course as they shall respectively be in priority of birth and seniority of age, and the heirs of the body and respective bodies of all and every such daughter and daughters issuing, the elder of such daughters and the heirs of her body issuing being always to take before and be preferred to the younger of such daughters and the heirs of her and their body and respective bodies issuing, AND IN DEFAULT of such issue, TO THE USE of the said C. B., his heirs and assigns for ever: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that every person, who, under or by virtue of the limitations hereinbefore contained, or of this proviso (*g*), shall become entitled to the actual possession or to the receipt of the rents and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and who shall not then use and bear the surname and arms of B., shall and do within the space of one year next after he or she shall so become entitled, or, being an infant, then within the space of one year after he or she shall attain the age of twenty-one years, and also that every person, whom any person so becoming entitled shall marry, shall and do within the space of one year after such female shall so be-

—remainder to the fourth and other after-born daughters of the settlor successively in tail general;

—remainder to the settlor in fee.

Proviso that every person taking the estate, and who does not bear the name and arms of the settlor, shall thenceforth bear the same,

(*g*) If the settlement be intended to contain shifting clauses, add "or of any proviso herein contained." Or, perhaps, it might be better to substitute for the expression in the text "under or by virtue of these presents."

Reference to shifting clauses.

STRICT SETTLEMENT.

parties to these presents, that it shall be lawful for the said N. O. and P. Q., and the survivor of them, and the executors and administrators of such survivor, at any time or times hereafter, at the request of the said A. B. and C. B. during their joint lives, and after the death of either of them, at the request of the survivor of them during his life, (such request being testified by some writing sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses), and after the decease of such survivor, at the request (testified in like manner) of the person who shall for the time being be entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore released, or expressed and intended so to be, and shall be of the age of twenty-one years (*n*), (but, nevertheless, subject and without prejudice to such mortgage or mortgages, or lease or leases, as last aforesaid), To ENFRANCHISE, for such price or consideration in money as they or he shall think proper, any copyhold or customary tenements held of any of the manors hereby released, or expressed and intended so to be, and to convert the same into hereditaments of a freehold tenure, and so that the same may be held freed and discharged from all customary rents, fines, heriots, and services, and from all customs (*o*); AND ALSO to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other lands, tenements, and hereditaments, to be situate in England or Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, all or any part of the said hereditaments and premises hereinbefore released, or expressed and intended

(*n*) See supra, p. 539, n. (*g*).

Power of enfranchisement.

(*o*) In this case, the powers required for effectuating an enfranchisement are blended with those for effectuating a sale or exchange. But an example will be found supra, p. 534, in which the powers for enfranchising are given separately. The last-mentioned course is, perhaps, the best, because it requires less variation in the accustomed power of sale and exchange. See the references with regard to enfranchisement, supra, p. 525, n. (*c*). See, too, the form of a power to grant licenses to copyholders, supra, p. 539, and see n. (*f*).

STRICT SETTLEMENT.

so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in lands, tenements, or hereditaments, as to the said N. O. and P. Q., or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable, and, upon any such exchange, to give or receive any sum or sums of money for equality of exchange (*p*); AND for the purpose of effecting any such partition, enfranchisement, sale, or exchange as aforesaid, but not for any other purpose, it shall be lawful for the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, at such request as aforesaid, or in respect to any partition, at their or his discretion, (as the case may be), by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them or him in the presence of, and attested by, two or more credible witnesses, absolutely to revoke, determine, and make void, (but subject and without prejudice as aforesaid), all and every or any of the uses, trusts, powers, provisoes, agreements, and declarations hereinbefore expressed and contained of and concerning the hereditaments and premises so proposed to be sold or exchanged, and the manors of which the tenements so proposed to be enfranchised shall be held, or of any part thereof, and by the same or any other deed or deeds, instrument or instruments in writing, (to be so sealed and delivered, and so attested as aforesaid), to limit, declare, direct, or appoint any other use or uses, trust or trusts, estate or estates of the same hereditaments and premises (*q*): AND THAT the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, shall with all convenient

—and for the purpose of any partition, enfranchisement, sale, or exchange, to revoke the existing and appoint new uses.

Purchase-monies, and monies received on partition, ex-

(*p*) See supra, p. 540, n. (*h*). The clause (supra, p. 540) giving the trustees discretion as to the manner and terms of sale, should be inserted here. See supra, p. 541, n. (*i*).

(*q*) Unless there be a general receipt clause in the settlement embracing the monies paid under the power of sale and exchange, the usual authority for the trustees to give receipts must be inserted here. See supra, p. 542, and the note (*l*).

STRICT SETTLEMENT.

speed, after the effecting of any such partition, enfranchisement, sale, or exchange, pay and apply the money to arise by such sale or enfranchisement, or to be received for equality of such partition or exchange, in or towards satisfaction and discharge of any principal sum or sums of money which may then, under or by virtue of these presents, or otherwise, have been charged upon or affect the said hereditaments and premises hereinbefore released, or expressed and intended so to be (*r*); AND SHALL lay out and invest the surplus, if any, of such money, in the purchase of lands, tenements, or hereditaments, to be situate in England or Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, or of leasehold, customary, or copyhold tenure, convenient to be held with such fee-simple lands, tenements, or hereditaments, or with any lands, tenements, or hereditaments for the time being subject to the uses of these presents, yet so that such purchase or purchases shall be made during the joint lives of the said A. B. and C. B., and the life of the survivor of them respectively, with their and his consent respectively in writing, And after the decease of such survivor, with the consent in writing of the person who for the time being would, under the limitations hereinbefore contained, be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said lands, tenements, and hereditaments so to be purchased, in case the same were then actually purchased and settled, and who shall be of the age of twenty-one years; but if there shall be no such person of the age of twenty-one years, then such purchase or purchases shall be made at the discretion of the said N. O. and P. Q., or the survivor of them, or the executors or administrators of such survivor; AND FURTHERMORE, that the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, do and shall settle and assure, or cause to be settled and assured, as well the lands, tenements, and hereditaments to be received upon partition or in exchange, as the lands, tenements, and hereditaments so to be purchased as hereinbe-

change, or enfranchisement, to be applied in discharge of incumbrances;

—and the surplus to be invested in the purchase of lands;

(*r*) This clause as to the discharge of incumbrances is generally inserted as a power, not as a trust. See supra, p. 545.

STRICT SETTLEMENT.

fore is mentioned, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as are in these presents expressed and contained of and concerning the hereditaments which shall have been allotted away on such partition or exchange, or have been sold as aforesaid, or of the manors of which the tenements so enfranchised shall have been held, or as near thereto as the deaths of parties and other circumstances will then admit of (*s*), YET SO NEVERTHELESS, that if any of the lands, tenements, and hereditaments so to be received upon partition or in exchange, or so to be purchased as aforesaid, shall be held by lease or leases for years, the same shall not vest absolutely in any person or persons hereby made tenant or tenants in tail male or in tail by purchase, who shall not attain the age of twenty-one years (*t*); AND so that if any of such lands, tenements, and hereditaments shall be held by copy of court roll for lives, or lease or leases for lives or for years, then (so far as circumstances may require) proper provisions shall be inserted in the settlements to be made thereof for renewing the same from time to time, as occasion shall require (*u*): AND MOREOVER, that until the money to arise by any such sale or enfranchisement, or be received for equality of partition or exchange as aforesaid, shall be disposed of in the manner hereinbefore mentioned, the said N. O. and P. Q., and the survivor of them, and the executors or administrators of such survivor, do and shall, with such consent or at such discretion, (as the case may be), as lastly hereinbefore is mentioned, lay out and invest, [*see supra, p.* 545] (*v*): Trusts of the

—but so that leaseholds shall not vest absolutely.

Monies to be invested till laid out in land.

(*s*) The words, "but not so as to increase or multiply charges," are sometimes added, see supra, p. 543, n. (*n*).

(*t*) See a different form of this clause, supra, p. 543, and the note (*o*).

(*u*) See a different form of this clause, supra, p. 544, and the note (*p*).

(*v*) As to the law relating to powers of sale and exchange, see the references supra, p. 546, n. (*s*).

It should be observed, that the power of sale in this settlement omits

STRICT SETTLEMENT.

term of 900 years;

—to raise money for the payment of the incumbrances, and of monies subsequently directed to be paid;

—and to manage and cultivate the property;

AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that the said term of nine hundred years, hereby created, is hereinbefore limited to the said C. B., E. F., and G. H., their executors, administrators, and assigns, UPON TRUST that they the said C. B., E. F., and G. H., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall from time to time, when and as money shall be wanting for paying, discharging, and raising the several annuities, mortgages, incumbrances, and sums of money for the payment, discharge, and raising of which provision is hereinafter made, borrow and take up at interest any sum or sums of money upon mortgage of all or any part of the hereditaments and premises comprised in the same term, for all or any part of such term, or upon the security of any transfer or assignment of any of the mortgages which may for the time being be subsisting therein; And do and shall apply the sum or sums of money to be so borrowed in the manner hereinafter mentioned; AND UPON FURTHER TRUST, that, in the meantime and until the period shall have arrived when such conveyance as hereinafter is mentioned is directed to be made by the trustees or trustee for the time being of the lastly hereinbefore recited indenture of release, and during such further time (if any) after that period as the said A. B. shall live, the said C. B., E. F., and G. H., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall order and direct the management, cultivation, and improvement of the hereditaments and premises comprised in the said term of nine hundred years, and stock and keep up the same, or such of them as shall not be tenanted, and fell timber or wood on the said hereditaments and premises, and hold the courts of the said manors, and demise or lease such manors, lands, hereditaments, and premises, (and as to the messuage or mansion-house called ——, either with or without the

---

the power to raise money by mortgage, supra, p. 544, because the object of that clause is intended to be provided for under the trusts of the term of nine hundred years.

STRICT SETTLEMENT.

books and articles intended to be hereinafter assigned), and do all acts, matters, and things in relation thereto, in such or the like manner as the said trustees or trustee for the time being of the lastly hereinbefore recited indenture of release are or is hereinafter directed to do during the period hereinafter mentioned, in regard to the hereditaments and premises for the time being vested in them or him under or by virtue of the same indenture (*x*); AND FURTHER, do and shall receive the rents, issues, and profits of the hereditaments and premises comprised in the said term of nine hundred years, and do and shall in the meantime, and until the period shall have arrived when such conveyance as aforesaid is directed to be made, apply and dispose of such rents, issues, and profits, in manner hereinafter directed; AND DO AND SHALL during such further time (if any) after that period as the said A. B. shall live, apply and dispose of such rents, issues, and profits, in manner following, (that is to say), IN THE FIRST PLACE, in paying and discharging the growing payments to become due for or in respect of any annuity or annuities, or for or in respect of the interest of any mortgages or incumbrances which may then affect the said hereditaments and premises, or any part thereof; AND IN THE NEXT PLACE, in raising, so long as the said A. B. and C. B. shall jointly live, for him the said C. B., and after the decease of the said C. B., then so long as the said A. B. and such other person, (if any), being male, as shall for the time being be entitled to the freehold or inheritance in remainder immediately expectant on the decease of the said A. B., of the manors, lands, and hereditaments hereby released, or expressed and intended so to be, shall jointly live, for such other person so being a male, the annual sum of £——, clear of all deductions for taxes, assessments, or other charges or outgoings whatsoever, by equal half-yearly payments on the —— day of —— and —— day of —— in every year, the first payment thereof to be made on such of the said days as shall happen first after the period shall have arrived when

—and until a certain period apply the rents in manner afterwards directed;

—and after that period, during the life of the settlor,

—to pay annual incumbrances;

—and certain annual sums;

(*x*) See the power referred to infra, p. 613.

STRICT SETTLEMENT.

such conveyance is directed to be made as aforesaid, at which period the like annual sum of £——, directed to be raised for the said C. B., or such other person as aforesaid, under the provisions hereinafter contained, will cease to be raisable; And do and shall pay and apply the annual sum of £——, so to be raised under the trusts of the said term of years, in the manner hereinafter mentioned; AND AS TO so much of the said rents, issues, and profits as shall remain after answering the trusts aforesaid, DO AND SHALL pay such surplus rents, issues, and profits to the said A. B. during his life; but subject nevertheless to the proviso hereinafter contained; AND UPON FURTHER TRUST, that, subject and without prejudice to the trusts aforesaid, the said C. B., E. F., and G. H., and the survivors and survivor of them, and the executors or administrators of such survivor, from time to time, when and as any person or persons subject to impeachment for waste shall, under or by virtue of the limitations hereinbefore contained, be entitled to the said manors, lands, hereditaments, and premises comprised in the said term of nine hundred years in remainder immediately expectant upon the determination of the same term, do and shall mark, allot, and set out, or cause to be marked, allotted, and set out, such timber and other trees to be felled and cut down from off the said manors, lands, hereditaments, and premises as shall from time to time be wanted for the new building, repairing, or amending of all or any of the mansion-houses, messuages, farm-houses, outhouses, edifices, or buildings now standing or being, or hereafter to be erected, and standing and being upon any part or parts of the said manors, lands, hereditaments, and premises, and do and shall permit the same to be felled, cut down, and used by such person or persons, or by his or their agents, workmen, or tenants, for the purposes for which the same shall be so wanted; AND, SUBJECT THERETO, do and shall from time to time, when and as the said trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, shall think proper, fell and cut down, or cause to be felled and cut down, all such timber and other trees as shall be at their full growth and height of improvement, or

—and the surplus to the settlor for life;

—and upon trust to cut timber needed for repairs;

—and such other timber as ought to be cut, and sell the same.

STRICT SETTLEMENT.

in a state of decay, or which ought to be felled and cut down for the improvement of other timber and trees, And do and shall sell and dispose of the timber and other trees which shall be so felled and cut down as last aforesaid, for the best price that can be reasonably obtained for the same, And do and shall apply the clear monies arising from such sale in such or the like manner as is hereinbefore directed in regard to the monies to be received upon or to arise from any partition, enfranchisement, sale, or exchange which may be made under the powers for those purposes hereinbefore contained: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that the said C. B., E. F., and G. H., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, subject and without prejudice to the trusts aforesaid, from time to time permit the rents, issues, and profits of the said hereditaments and premises comprised in the said term of nine hundred years, or so much of the said rents, issues, and profits as shall remain after answering the trusts aforesaid, to be received by the person or persons who for the time being shall be entitled to the same hereditaments and premises in remainder immediately expectant upon the determination of the same term: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that when all the trusts of the said term of nine hundred years shall have been performed, or have become unnecessary or incapable of taking effect, and the costs attending the execution of such trusts shall have been fully satisfied (*y*), the same term, and also the said term of one day hereinbefore limited to the said I. K. and L. M., shall, subject and without prejudice to any mortgage or other disposition which shall have been made under the aforesaid trusts, absolutely cease and determine. AND THIS INDENTURE ALSO WITNESSETH, &c., [*Cove-*

Proviso that, subject to the preceding trusts, the reversioner shall take the profits.

Proviso for cesser.

Covenant to surrender copyholds.

(*y*) In the present case the trustees are authorized under the general trusts of the term to raise their costs; but if it were not so, an authority to that effect should be introduced here. See the form, supra, p. 519.

Costs of trustees.

STRICT SETTLEMENT.

nant to surrender copyhold hereditaments upon trusts to correspond with the limitations of the freeholds, supra, p. 546]: AND SO FAR AS RELATES to his life estate in the said hereditaments described or mentioned in the —— schedule to these presents, with their rights, members, and appurtenances, and so far as relates to the fee-simple in possession of the hereditaments described or mentioned in the —— schedule to these presents, with their rights, members, and appurtenances, the said A. B. DOTH HEREBY, for himself, his heirs, executors, and administrators, AND so far as relates to the fee-simple in remainder expectant upon the decease of the said A. B. of and in the hereditaments described or mentioned in the —— schedule to these presents, with their rights, members, and appurtenances, the said C. B. DOTH HEREBY, for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., and their heirs, in manner following, (that is to say), THAT, notwithstanding any act, deed, matter, or thing whatsoever, made, done, committed, permitted or suffered to the contrary by him the said A. B., or his ancestors or testators, or any of them, or the said C. B., (except as hereinafter is mentioned), he the said A. B. is now seised, &c., [*that A. B. is seised of the hereditaments in the —— schedule for life; and of those in the —— schedule in fee; that C. B. is seised in fee in remainder expectant on A. B.'s life estate of the hereditaments in the —— schedule; that the power is good; for right to appoint and to convey; for quiet enjoyment; free from incumbrances; and for further assurance, supra, pp. 552—555*].

Covenants for title.

Witnesseth further, assignment to the trustees of chattels.

AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, he the said A. B. HATH assigned, and by these presents DOTH assign, unto the said C. B., E. F., and G. H., their executors, administrators, and assigns, ALL and singular the books, prints, pictures, plate, linen, china, glass, and other household goods and furniture now in or about the capital messuage or mansion called ——, (which messuage or mansion is mentioned in the —— schedule to these presents), AND ALL THE ESTATE &c.: TO HAVE AND TO HOLD the said books and articles hereby assigned, or expressed

Habendum as heirlooms;

STRICT SETTLEMENT.

and intended so to be, unto the said C. B., E. F., and G. H., their executors, administrators, and assigns, UPON the same trusts, as nearly as may be, as are hereinbefore declared, of the said term of nine hundred years, and, subject thereto, UPON TRUST to permit the same to be held and enjoyed with the said messuage or mansion-house called ——, so far as the rules of law or equity will permit, by the person or persons who for the time being will be entitled to the actual possession, or to the receipt of the rents and profits of the same messuage or mansion-house under or by virtue of the limitations or provisoes hereinbefore contained (z): PROVIDED NEVERTHELESS, that the same books and articles shall not vest absolutely in any person hereby made tenant in tail male or in tail by purchase, unless such person shall attain the age of twenty-one years (a): AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that as soon as conveniently may be after the execution of these presents, a schedule or inventory shall be made and taken of such books and articles, and two copies shall be made of such schedule or inventory, and one of such copies shall be placed and remain in the hands of the said C. B., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, and the other copy shall be left at the said messuage or mansion-house, and shall from time to time, after the period shall have arrived when such conveyance as hereinafter is mentioned is directed to be made, or after the decease of the said A. B., whichever shall last happen, be signed by the person who shall for the time being be entitled to the actual possession, or to the receipt of the rents and profits of such messuage or mansion-house; AND such person shall execute and give to the said trustees or trustee for the time being a bond or obligation in writing, with a sufficient penalty,

—with a proviso against their vesting in any tenant in tail dying under 21.

Direction that inventories shall be made and kept of the heirloom chattels;

—and security given for their due preservation and insurance.

(z) As to the settlement of personal chattels to go in the nature of heirlooms along with lands in strict settlement, see Harg. & Butl. Co. Lit. 18 b., n. 7; 2 Pow. Dev. by Jarman, 642; Williams's Law of Executors, Part 2, bk. 2, ch. xi. s. 11, div. 1.

Settlement of chattels in strict settlement.

(a) See supra, p. 543, n. (o).

STRICT SETTLEMENT.

for preserving the same books and articles safely and in good order and condition, by making such reparations, restorations, and replacings thereof as the said trustees or trustee for the time being shall think necessary, and for keeping such of the said books and articles adequately insured against loss or damage by fire as shall be of an insurable nature, and that the said trustees or trustee for the time being shall and may from time to time inspect and examine into the state and condition of such books and articles, and require the production of the policy or policies of insurance thereof, and of the receipts for the premium or premiums paid in respect thereof, and shall cause such reparations, restorations, or replacings to be made thereof or therein as they or he shall think necessary, and all such reparations, restorations, and replacings, and the premiums and expenses of such insurance, shall be made at the expense of the trust premises, whilst the said trustees or trustee shall be entitled, and afterwards at the expense of the person who shall for the time being be entitled to hold, use, and enjoy the same: AND THAT it shall be lawful for the said trustees or trustee, from time to time, upon the request in writing of the person entitled to the use of the said plate, (such person having attained his or her age of twenty-one years), to exchange the said plate, or any part thereof, for any other article or articles of plate, of equal weight and value, (the expense of all such exchanges to be borne by the person making such request as aforesaid), and that the plate and other articles which may be substituted or replaced as aforesaid shall be held and enjoyed in the like manner in all respects as the original plate and other articles. AND THIS INDENTURE ALSO WITNESSETH, that it is hereby agreed and declared between and by the parties to these presents, that the respective trustees or trustee for the time being of the lastly hereinbefore recited indenture of release, and of the term of nine hundred years hereinbefore created, do and shall stand and be possessed of, and interested in, the monies which may arise from the sales, enfranchisements, mortgages, and exchanges which may be made under the trusts and provisions contained in the lastly hereinbefore recited indenture of release, and of and in all

Proviso that plate may be exchanged.

Witnesseth further, trusts of the monies to arise under the indenture of even date, and to be raised under the trusts of the term of 900 years.

STRICT SETTLEMENT.

other the monies, (except rents, issues, and profits), which shall come to their or his hands under or by virtue of the same indenture of release, and of and in the monies which may arise from the mortgages which may be made under the trusts of the said term of nine hundred years hereinbefore created, and of and in any other monies which may be borrowed under the trusts of the same term, UPON AND FOR THE TRUSTS, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter declared and contained of and concerning the same, (that is to say), UPON TRUST, that the said respective trustees or trustee for the time being with and out of the said monies do and shall, in the first place, retain, pay, and discharge the costs, charges, and expenses of, and attending or in anywise relating to, the preparing, engrossing, and executing of these presents, and the lastly hereinbefore recited indenture of release, and the leases for a year on which the same are respectively grounded; AND ALSO the costs, charges, and expenses of, or attending, or in anywise relating to the effecting of such sales, enfranchisements, and exchanges, and such respective mortgages as aforesaid, or which they or he shall or may incur, sustain, or be put unto in defending or otherwise relating to any action or suit, at law or in equity, which may be brought, commenced, or prosecuted by any person or persons whomsoever against the said A. B. and C. B., or either of them, or their or either of their heirs, executors, or administrators, or against the said respective trustees or trustee for the time being, or any of such trustees, in relation to any of the hereditaments described or mentioned in the four first schedules to these presents, or any mortgage, annuity, or incumbrance which may for the time being be subsisting or charged thereon, or which they or he shall or may otherwise incur, sustain, or be put unto, in or about the execution and carrying into effect any of the trusts and provisions contained in the lastly hereinbefore recited indenture of release, or of the trusts and provisions contained in these presents, in regard to such trust monies, or the said hereditaments and premises; AND DO AND SHALL, in the

To pay costs of deeds;

—and the costs of the trusts, including those of all actions and suits;

—and money

STRICT SETTLEMENT.

next place, pay any sum or sums of money which may at any time or times be required for equality of exchange under the power of exchange contained in the lastly hereinbefore recited indenture of release; AND DO AND SHALL pay and apply the surplus or residue which shall from time to time remain of the said trust monies, after answering and satisfying the trusts and purposes aforesaid, in such order and in such manner as the said respective trustees or trustee for the time being shall think expedient, for or towards the redemption or repurchase, for such prices or sums of money as they or he shall think proper, of the said annuities mentioned in the said seventh and eighth schedules to these presents, for which purpose, they and he is and are hereby directed to contract with the person or persons entitled, or claiming to be entitled, to the said annuities for such redemption or repurchase thereof, at or for such price or equivalent as to them or him the said trustees and trustee for the time being shall seem expedient; AND ALSO, in or towards the payment, satisfaction, and discharge of the several mortgages and incumbrances mentioned in the said seventh and eighth schedules to these presents, AND OF any sum or sums of money, not exceeding in the whole the sum of £——, which he the said C. B. shall at any time or times, by writing under his hand, direct to be paid in discharge and satisfaction of any debt now owing by the said A. B. to any person or persons whomsoever, and not charged in the nature of an incumbrance upon the said hereditaments mentioned in the four first schedules to these presents, or any part or parts thereof; AND OF all and every the sums and sum of money which the said respective trustees or trustee for the time being may borrow in pursuance of the provision for that purpose contained in the lastly hereinbefore recited indenture of release, or under the trusts of the said term of nine hundred years hereinbefore created, AND DO AND SHALL stand possessed of and interested in the ultimate surplus or residue (if any) which shall remain of the said trust monies respectively, after answering and satisfying all the trusts and purposes aforesaid, IN TRUST for such person and persons, and

required for equality of exchange;

—and in the repurchase of scheduled annuities;

—mortgages and incumbrances;

—and certain further sums in discharge of simple contract debts of the settlor;

—and monies borrowed under the preceding trusts.

The surplus to be paid as the settlor and his eldest son shall appoint;

STRICT SETTLEMENT.

for such ends, intents, and purposes, as they the said A. B. and C. B. shall from time to time or at any times during their joint lives, by any writing or writings under their hands and seals, jointly direct or appoint; AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, THEN as the said C. B., shall from time to time or at any time after the decease of his said father, by any writing or writings under his hand and seal, direct or appoint; AND IN DEFAULT of any such last-mentioned direction or appointment, and so far as no such last-mentioned direction or appointment, shall extend, UPON TRUST to apply the same in such and the like manner as the monies to arise by any sale or enfranchisement, or to be received for equality upon any exchange or partition whichmay be made under the powers hereinbefore contained, are hereinbefore directed to be applied: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that, in the meantime, and until the period shall have arrived when such conveyance as hereinafter is mentioned is directed to be made by the trustees or trustee for the time being of the lastly hereinbefore recited indenture of release, the respective trustees or trustee for the time being of the same indenture of release, and of the said term of nine hundred years hereinbefore created, shall apply the rents, issues, and profits of the said hereditaments and premises for the time being vested in them under the same indenture of release and term of nine hundred years respectively, in such order and in such manner as they or he shall think proper, in or towards the discharge of the arrears and payments now due, and hereafter to become due, for or in respect of the several annuities, and for or in respect of the interest of the several mortgages and sums for the redemption and discharge and raising of which respectively provision is hereinbefore made, AND in or towards the raising and payment to the said C. B., so long as the said A. B. and C. B. shall jointly live, and this present trust shall continue, and after the decease of the said C. B., and so long as he the said A. B. and such other person, (if any), being a male, as shall

—and in default, as the eldest son, after the death of his father, shall appoint;

—and in default, as the money to arise under the power of sale and exchange.

Rents and profits of the estates to be sold and comprised in the term of nine hundred years respectively, to be applied in keeping down annuities and interest of incumbrances;

—and in or towards raising or paying certain annual sums;

STRICT SETTLEMENT.

for the time being, during the continuance of the present trust, be entitled to the freehold or inheritance in remainder immediately expectant upon the decease of the said A. B. of the said hereditaments and premises hereby released, or expressed and intended so to be, shall jointly live, and this present trust shall continue, then to the said other person, of the annual sum of £——, and in and towards the raising and payment to the said A. B. during his life and the continuance of this present trust, and after his decease, to such other person as shall for the time being, during the continuance of this present trust, be entitled to the freehold or inheritance in possession of the same hereditaments and premises, of the annual sum of £—— of lawful money, each of such annual sums to be paid clear of all deductions for taxes, assessments, or other charges or deductions whatsoever, by equal half-yearly payments on the —— day of —— and —— day of —— in every year, the first payment to be made on the —— day of —— next ensuing the date of these presents; AND DO AND SHALL, from time to time, and until the period shall have arrived when such conveyance as aforesaid is directed to be made, apply so much of the said rents, issues, and profits as shall from time to time remain, after answering the purposes aforesaid, to the same purposes, and in the same manner, to and in which the said monies (exclusively of rents, issues, and profits) arising under the lastly hereinbefore recited indenture of release, or to be borrowed under the trusts of the said term of nine hundred years, are hereinbefore directed to be applied: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that, in regard to the annual sum of £—— to which the said C. B. or such other person, (if any), being a male, as aforesaid will for the time being be entitled under the trusts or provision lastly hereinbefore contained, and under the trusts of the said term of nine hundred years hereinbefore created, the respective trustees or trustee for the time being of the lastly hereinbefore recited indenture of release and of the same term do and shall from time to time pay the same annual sum to the said C. B. or such other person as afore-

—and the residue to be applied as the monies arising under the trusts of the term of nine hundred years.

Proviso that the annual sum provided for the eldest son of the settlor is to be paid to him only till he assign, and afterwards, for the benefit of him, his wife, and children.

STRICT SETTLEMENT.

said, only so long as the said C. B. or such other person as aforesaid shall not make any grant, bargain, sale, mortgage, assignment of, or charge upon the said annual sum of £——, or any part thereof, or attempt, or enter into any covenant or agreement so to do, or commit or suffer any act whereby the same annual sum of £——, or any part thereof, would or might, if hereby made payable to him the said C. B. or such other person as aforesaid, absolutely in his own name, be forfeited to, or vested in, any other person or persons, but if any such grant or other act shall be made, committed, or suffered, then and in any of the said cases the said trustees or trustee do and shall pay, apply, and dispose of the said annual sum of £——, so long as the same shall be payable as aforesaid, not to or for the benefit of the person or persons to whom, or in whose favour, or with whom he shall or may have made or attempted to make any such grant, bargain, sale, mortgage, assignment, charge, covenant, or agreement, or to or in whom the same annual sum, or any part thereof, would or might be forfeited or become vested as aforesaid, but to or for such ends, intents, and purposes, for the maintenance and support of the said C. B. or such other person as aforesaid, or of his respective wife and issue, or any of them, as they or he the said trustees or trustee for the time being shall think fit (*b*); [*Similar proviso as to the annual sum of £——, or surplus rents, issues, and profits (as the case may be) to which the said A. B. shall for the time being be entitled, &c.*]: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that if in any year, until the period shall have arrived when such conveyance as aforesaid is hereinafter directed to be made, the rents, issues, and profits of the hereditaments and premises, which, under or by virtue of the lastly hereinbefore recited indenture of release, and of the said term of nine hundred years hereby created, shall for the time being be vested in the trustees or trustee thereof respectively, shall be insufficient to discharge the said several

Proviso that if the rents and profits be insufficient to pay the annual sums, they may be paid out of the principal monies raised.

(*b*) As to the validity of a provision of this nature, see supra, p. 367, n. (*a*).

STRICT SETTLEMENT.

payments hereinbefore directed to be made with and out of the same, including the said several annual sums of £—— and £——, or such of them as shall for the time being be payable, then the deficiency shall from time to time be supplied and made good out of monies which (exclusively of rents, issues, and profits) may otherwise be received under the same indenture of release, or be borrowed under the trusts of the same term of nine hundred years: PROVIDED ALWAYS, AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said respective trustees or trustee for the time being do and shall, from time to time, until such period as aforesaid, as and when they or he shall think fit, deposit any monies which may come to their or his hands under the lastly hereinbefore recited indenture of release, or the said term of nine hundred years hereby created, till the same can be paid and applied as hereinbefore directed, in the hands of such banker or bankers as they or he may think proper, for safe custody, in their or his own names or name (*c*), or lay out and invest the same in the parliamentary or public stocks or funds of Great Britain, or at interest upon government securities (*d*), in their or his own names or name, and shall or may from time to time alter, vary, and transpose, sell or transfer, the same stocks, funds, and securities as they or he shall think fit; AND DO AND SHALL stand and be possessed of and interested in the said stocks, funds, and securities, and of and in the monies to arise and be produced by such sale or transfer thereof as aforesaid, and of and in the interest, dividends, and annual produce of such

Power to deposit monies in banks, or to invest the same till they can be applied for the purposes of the trusts.

Trust monies may be deposited in banks.

(*c*) Trustees may without any special authority deposit monies in the hands of bankers, if such deposit be necessary or expedient for the due execution of their trusts; but the monies ought to be deposited on a trust account, and not simply in the names of the trustees. (Lewin's Law of Trusts and Trustees, pp. 299, 302, 322; see, too, the cases cited *supra*, pp. 327, 328.

(*d*) There is no power to invest on real securities, because the investment is intended to be but temporary. It may be a question, whether trustees should be empowered to invest monies arising under powers of sale and exchange, or other monies which are to be laid out in the purchase of land, on real securities.

STRICT SETTLEMENT.

stocks, funds, and securities, upon such trusts, and for such intents and purposes, as are hereby expressed and declared of and concerning the monies so to be laid out and invested as aforesaid: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that it shall be lawful for the said respective trustees or trustee for the time being to make any composition for or touching or concerning any of the said mortgages, annuities, and incumbrances, mentioned in the said seventh and eighth schedules respectively to these presents, or any sum or sums of money which may be borrowed or taken up under or by virtue of the lastly hereinbefore recited indenture of release, or the trusts of the said term of nine hundred years hereby created, and to submit any difference or dispute thereon to arbitration, and to abide by and perform or dispute the award or determination to be made in consequence of such submission, and also for them the said A. B. and C. B., or either of them, and in their or either of their names, in any matter relating to the trust premises, to appear, and the persons of them, or either of them, to represent and personate in all courts and before all judges and magistrates, both at law and in equity, as to the said respective trustees or trustee shall seem fit (*e*): AND IT IS HEREBY FURTHER AGREED and declared between and by the said parties to these presents, that, in the meantime, and until the period shall have arrived when such conveyance as aforesaid is hereinafter directed to be made, the trustees or trustee for the time being of the lastly hereinbefore recited indenture of release shall, by such ways or means as they or he shall in their or his discretion think fit and most advantageous, order or direct the management, cultivation, and improvement of the hereditaments and premises for the time being vested in them or him under or by virtue of the same indenture, and stock and keep up the same or such of them as shall not be tenanted, and, in order thereto, that it shall be lawful for the said trustees or

Power for the trustees to compound with creditors, and submit to arbitration.

Trusts for the management, until sale of the estates to be sold;

(*e*) See a power of this nature in a settlement of personalty, supra, p. 426.

STRICT SETTLEMENT.

trustee to purchase any horses, waggons, live or dead stock, or any articles or things whatsoever, for the use of the said hereditaments and premises, or any of them, and to sell all or any of the same again, and to pay such sum or sums of money for the salary or salaries, allowance or allowances, of such person or persons as they or he, the said trustees or trustee for the time being, shall think proper to employ as hereinafter mentioned, And to cause the produce of the hereditaments and premises, the cultivation and management of which are to be ordered and directed as aforesaid, or such part of such produce as shall not be used thereon for the purposes of such cultivation and management as aforesaid, to be sold and disposed of in such manner and by such ways and means as they or he shall think proper and advantageous; AND THAT it shall be lawful for the said trustees or trustee for the time being to fell or cut down any timber or wood that now is or hereafter shall or may be growing upon or within the same manors, lands, hereditaments, and premises, and to employ the same in or for the benefit of the same hereditaments and premises, or any part or parts thereof, or to sell the same, and the money arising from the sale thereof, as well as any other money arising under this present trust or provision, shall be considered as part of the rents, issues, and profits of the said manors, lands, hereditaments, and premises, and shall be applied accordingly; AND ALSO, that it shall be lawful for the said trustees or trustee for the time being to hold the courts of and belonging to the several manors, or of any of them, AND for the several purposes aforesaid, or any of them, to employ from time to time such agents, stewards, bailiffs, and workmen, upon such terms and with such salaries as they or he shall think proper, and generally to do or cause to be done all such acts, deeds, matters, and things, respecting the management, cultivation, and improvement of the said hereditaments and premises, as they or he could or might do if they or he were the owners or occupiers thereof; AND ALSO, that it shall be lawful for the said trustees or trustee for the time being, at their and his discretion, to grant, demise, lease, or let the said manors, lands, hereditaments,

—including powers to cut and sell timber;

—and to hold manorial courts;

—and employ agents, bailiffs, &c.;

—and to grant leases.

STRICT SETTLEMENT.

and premises, or any part or parts thereof, for any term or terms of years not exceeding twenty-one years in possession, at such rent, and upon such terms, stipulations, and agreements, in all other respects, as the said trustees or trustee shall in their or his discretion think fit (*f*).

Witnesseth further, assignment of rents in arrear.

AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, he the said A. B. hath assigned, and by these presents doth assign, unto the said C. B., E. F., and G. H., their executors, administrators, and assigns, ALL the rents and arrears of rent now due, and hereafter to become due, from the tenants of the hereditaments described or mentioned in the fourth schedule to these presents, or any of such hereditaments, or any part or parts thereof, AND ALL THE ESTATE &c.: TO HAVE, HOLD, receive, and take the same rents and arrears of rent unto the said C. B., E. F., and G. H., their executors, administrators, and assigns, upon the trusts hereinbefore declared of and concerning the rents, issues, and profits of the said hereditaments and premises; AND THE SAID A. B. hath made, constituted, and appointed, and in his place and stead put, and by these presents doth make, constitute, and appoint, and in his place and stead put, the said C. B., E. F., and G. H., and the survivors and survivor of them, and the executors and administrators of such survivor, their or his assigns, his true and lawful attornies and attorney, in their or his names or name, either jointly with, or separately from, the names or name of the said A. B., his executors or administrators, or otherwise, as they the said trustees or trustee shall think proper and convenient, to ask, demand, sue for, levy, recover, and receive of and from all and every the said tenants, and of and from all and every other persons and person whomsoever, liable, obliged, or interested to pay the same, the said rents and arrears of rent hereby assigned, or expressed and intended so to be; And in case of nonpayment of all or any part or parts of the same rents or arrears of rent, or any of them, or any part thereof, to enter and dis-

Habendum to the trustees on the same trusts as future rents.

Power of attorney to receive and recover the rents in arrear;

(*f*) See the regular form of a power of leasing, supra, p. 530; and the other powers of leasing in the same Precedent.

STRICT SETTLEMENT.

train for all or any part or parts of the said rents or arrears of rent, and the distress and distresses then and there found to lead, drive, and take away, and impound, and the same in pound to detain and keep until the said rent or arrears of rent, and all costs, charges, damages, and expenses whatsoever attending the taking and keeping of such distress and distresses shall be fully paid and satisfied, and in default of payment thereof in due time after such distress or distresses shall be taken, to appraise and sell and dispose of the same distress and distresses, or otherwise to act therein, according to due course of law, and to commence, institute, prosecute, and carry on any action or actions, suit or suits, at law or in equity, attachment or attachments, or other proceedings which the said trustees or trustee for the time being shall deem requisite and necessary to compel the payment and delivery of all or any part of the said rents or arrears of rent, and the same action or actions, suit or suits, attachment or attachments, or other proceedings respectively to prosecute and follow up, or to discontinue and become nonsuit therein, or otherwise to act therein as to them or him, the said trustees or trustee for the time being, shall seem fit and advisable, and to use all other lawful ways or means to compel payment or delivery of all such rents or arrears of rent, or any part or parts thereof; AND FURTHER, to sign and give notices to the tenants of the said hereditaments and premises, or any part or parts thereof, to quit and deliver up possession of the same, or any part thereof, as may be requisite, or as occasion may require, and to institute, prosecute, and carry on, if necessary, any action or actions of ejectment, or suit or suits, at law or in equity, as the said trustees or trustee for the time being shall deem requisite or advisable for the recovery of possession of any of the said hereditaments and premises, and otherwise to act in relation thereto as they the said trustees or trustee for the time being shall think fit, and generally to do and perform all and every such lawful acts and things whatsoever concerning the premises as they or he shall in their or his discretion think advisable (*g*):

—and give notices to tenants.

Power of attor-

(*g*) It might be sufficient, perhaps, to use a short power of attorney

STRICT SETTLEMENT.

PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that such parts only of the hereditaments and premises by the lastly hereinbefore recited indenture of release directed or authorized to be sold, (including any hereditaments to be received in exchange under the provision for that purpose therein contained), and such parts only of the copyhold or customary tenements thereby directed or authorized to be enfranchised, shall be respectively sold and enfranchised, as the trustees or trustee for the time being of the same indenture shall think requisite and necessary to be sold and enfranchised for redeeming, discharging, and raising the several mortgages and incumbrances and annual sums of money, for the redemption, discharge, or raising of which with and out of (together with other monies) the monies to be raised by such sale and enfranchisement, provision is hereby made as aforesaid; AND FURTHER, that when and so soon as either all such as the said trustees or trustee for the time being shall deem requisite and necessary of the hereditaments and premises by the same indenture of release directed or authorized to be sold, (including all the hereditaments (if any) to be received in exchange under the provision for that purpose therein contained), shall have been sold or conveyed away in exchange, and all such as the said trustees or trustee shall deem requisite and necessary of the copyhold or customary tenements thereby directed or authorized to be enfranchised shall have been enfranchised, or (whichever shall first happen) the several annuities, for the redemption or repurchase of which provision is hereby made as aforesaid, (or such of them as shall not have previously ceased, or, not being redeemable or repurchasable by express stipulation, shall, on application from the said trustees or trustee for the time being, be refused to be redeemed or repurchased upon the terms required by them or him), shall have been redeemed or repurchased, and all the mortgages, incumbrances, and other sums of money, for the

Proviso, that no more of the estates directed to be sold shall be sold than is requisite for the purposes of the trust;

—and that such of the estates to be sold as shall not be sold, shall be conveyed to the uses of the settlement.

---

such as that given supra, p. 336; but when tenants of large estates are to be dealt with, it is more expedient expressly to clothe the trustees with the powers given them in the text.

ney to collect rents.

STRICT SETTLEMENT.

discharge and raising of which with and out of (together with other monies) the monies to be raised by such sale and enfranchisement, provision is hereby made as aforesaid, shall have been paid, discharged, and satisfied, then and immediately thereupon the said trustees or trustee for the time being do and shall convey and assure so many or such parts (if any) of the hereditaments and premises by the lastly hereinbefore-recited indenture of release directed and authorized to be sold and enfranchised, (including the hereditaments (if any) to be received in exchange, under the provision for that purpose therein contained), as shall not have been sold or enfranchised or conveyed away in exchange, (subject to such incumbrances (if any) as may then affect the same), to, for, and upon the uses, trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore expressed and declared or contained of and concerning the hereditaments and premises hereby released, or expressed and intended so to be, or such of the said uses, trusts, intents, and purposes, powers, provisoes, agreements, and declarations, as shall be then subsisting undetermined or capable of taking effect: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that nothing herein contained shall be construed to give any annuitant, mortgagee, or other incumbrancer, any further or other charge, lien, or security, than was subsisting before the execution of these presents (*h*); BUT NEVERTHELESS it is expressly agreed between and by the said A. B. and C. B., that as between them and their respective real and personal representatives the fund provided by the lastly hereinbefore recited indenture of release and by these presents respectively for the redemption, discharge, and

Creditors not to obtain any fresh lien;

—but as between the settlors and their representatives, the fund hereby provided for the discharge of incumbrances to be the exclusive fund.

Settlement for benefit of creditors not parties to it gives them no additional lien.

(*h*) This proviso is usually inserted in settlements of this nature; but it does not seem that, even in the absence of it, the creditors would obtain any further lien than they previously possessed. (*Garrard* v. *Lord Lauderdale*, 3 Sim. 1; 2 Russ. & My. 451; *Walwyn* v. *Coutts*, 3 Sim. 14; *Acton* v. *Woodgate*, 2 My. & K. 492; *Ravenshaw* v. *Hollier*, 7 Sim. 3; *Prosser* v. *Edmonds*, 1 You. & C. 481; *Jenkins* v. *Perry*, 3 You. & C. 178.

STRICT SETTLEMENT.

raising of all the said annuities, mortgages and incumbrances, and sums of money, shall be deemed the exclusive fund for those purposes: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the several and respective trustees or trustee for the time being of these presents, or of the hereinbefore-recited indenture of release, for any sum or sums of money payable to them or him under or by virtue of these presents or the same indenture, or in or about the execution of any of the trusts or powers hereinbefore or in the same indenture contained, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the same, or so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received; And that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received, or to inquire into the necessity, expediency, or propriety of any sale, enfranchisement, mortgage, partition, exchange, or other disposition which may be made under or by virtue of these presents or of the same indenture (*i*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if &c. [*power to appoint new trustees given to the settlor and his eldest son,* " or the survivor of them, or the executors or administrators of such survivor," *supra, p.* 548: *Clause for the indemnity of trustees, supra, p.* 550: *Clause for the payment of trustees' expenses, supra, p.* 551, *adding the following power*—" AND ALSO to settle, adjust,

Power to trustees to give receipts.

Trustee clauses;

—with special

(*i*) If this last clause of the power to give receipts were wanting, it might be considered that the purchasers, mortgagees, &c., would in every case be bound to see to the necessity, expediency, or propriety of the transactions in which they should engage; and it would of course be very difficult to satisfy them on this point. The clause would be a proper addition to the receipt clause, whenever it embraces monies to be paid by purchasers, mortgagees, or the like.

Purchasers, &c., should be protected from seeing to the necessity or propriety of a sale.

STRICT SETTLEMENT.

authority for the trustees to adjust and allow the accounts of deceased or retiring trustees.

and allow the accounts of any trustee or trustees who shall die or be abroad for twelve calendar months, or be desirous of being discharged of and from, or shall refuse, decline, or become incapable to act in the aforesaid trusts, and in whose place or stead a new trustee or trustees shall be appointed as aforesaid, and also to receive and give discharges for the money which shall appear to be the balance of the same accounts, without any responsibility in the person or persons paying the same money to see to the application thereof, or to be answerable or accountable for the misapplication or non-application of the same"]:

Proviso, that two of the trustees who are solicitors may charge for professional business performed in the execution of the trusts.

PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the parties to these presents, that notwithstanding the said E. F. and G. H. are appointed trustees by the lastly hereinbefore recited indenture of release and by these presents, they the said E. F. and G. H. respectively shall, over and above all monies to be expended and disbursed by them respectively, either in fees to counsel or in journeys, or in any other manner howsoever in or about or in anywise relating to the execution of the several trusts, powers, and authorities in the same indenture of release and these presents respectively expressed and declared or contained, be allowed and paid out of the trust monies the usual and accustomed charges allowed by clients to attornies and solicitors, not being trustees, for doing and transacting business of the like nature, for or relating to all abstracts, contracts, conveyances, assignments, assurances, deeds, letters, cases for the opinion of counsel, and writings, which may be necessary or requisite to be drawn, prepared, engrossed, perused, examined, executed, stated, or written, in, about, or in anywise relating to the execution of the same trusts, powers, and authorities, and for and relating to their respectively acting as attornies or solicitors, whether for themselves, as being in their character of trustees, plaintiffs, defendants, or other parties, or for the said A. B. and C. B., or either of them, or in any other manner, in any actions, suits, or other proceedings at law or in equity, or in any other business whatsoever to arise in or about, or in anywise relating to, the execution of

STRICT SETTLEMENT.

such trusts, powers, and authorities, and for the time, trouble, and attendance of themselves respectively and their respective clerks and agents in any matter or thing in anywise relating to the execution of such trusts, powers, and authorities, they the said E. F. and G. H. having respectively undertaken the execution of such trusts, powers, and authorities at the instance and request of the said A. B. and C. B., and upon that express stipulation or agreement (*k*). IN WITNESS &c.

(*k*) If a trustee who is a solicitor acts as a solicitor, he is not entitled, unless under a special direction, to charge for his labour; he can charge merely for his costs out of pocket; (*New* v. *Jones*, 9 Byth. Conv. by Jarman, 338); and a direction that he shall be so entitled must be express; it will not be implied from general language respecting the payment of the costs of the trusts and of the trustees' expenses. *Moore* v. *Frowd*, 3 My. & C. 45. Hence the clause in the text, which seems, however, to be more elaborate than is necessary. The following proviso may be substituted:—

Trustee who is a solicitor cannot charge for professional business done for the trust estate;

—unless by express direction.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the said E. F. and G. H., and each of them, [and any future trustee of these presents who shall be a solicitor or attorney], shall be entitled to be paid for all business done by them or him as a solicitor or attorney for or in respect of the trust estate, in the same manner in every respect as if they or he had not been trustees or a trustee of these presents."

INDEX TO THE NOTES.

A.

AGREEMENTS,
for leases,—construction of, 4—10.
principles for framing, 9.
inexpediency of, 10.
nature of tenancy under, 10.
should specify the intended clauses and covenants, 13.
agreement that lease shall contain usual clauses and covenants, 14—16.
See LEASES.

ADVANCEMENT,
power of, in marriage settlements, 320.
satisfaction of portions by, 518.

ADVOWSON,
partition of, 240.

ALIENATION,
right of, cannot be taken away, except from a married woman, 367.
but property may be so settled as to go over on voluntary alienation, 368.
and in certain cases on alienation by act of law, 268, 369.

ANTICIPATION. *See* SEPARATE USE, ALIENATION.

APPORTIONMENT,
of rent reserved on leases, in respect of time, 110.
of rent-charge on partition of the subject-lands, 223.
when very small, 251.

APPURTENANCES. *See* GENERAL WORDS, RIGHT OF WAY, EASEMENTS.

ARBITRATION,
recent cases relating to, 161—163.

ARTICLES,
for marriage settlement, when used, 455.
form of, immaterial, 458.
ASSIGNMENT,
restriction on, *see* CONDITION.
ATTORNEY. *See* POWER OF ATTORNEY, SOLICITOR.

B.

BANKRUPTCY. *See* ALIENATION.
bonds and covenants by husband to settle money on, 369, 381, 396.
BUSINESSES,
covenant in lease as to carrying on. *See* TRADES, NUISANCE.

C.

CHILDREN,
usual trusts for, in marriage settlements of personalty, 318.
objects and extent of a power to appoint to, *ib.*
trusts in marriage settlements in default of children becoming entitled, 322.
how land to be divided among, should be settled, 341, 560.
younger—who are, 434.
of a future marriage—how to be provided for in marriage settlements, 484.
CLAUSES,
to be inserted in lease, should be specified in agreement for, 13.
what are usual in leases, 14.
unusual, 15.
proper in leases under powers, 16.
ordinary, in marriage settlements of personalty, 319—322.
of survivorship and accruer, 437.
name and arms clause in settlements, 619.
CONDITION,
payment of rent, not a condition precedent to performance of covenant for quiet enjoyment, 41.
not to assign or underlet—how constituted and construed, 60, 64.
how broken, 61.
whether broken by a bequest, 63.
when binding on the representatives and assigns of the lessee, 62.

CONDITION—(*continued*).
general restriction on assignment does not include an assignment by operation of law, 61.
determining lease on bankruptcy or insolvency valid, 62.
not to assign or underlet—altogether dispensed with by a license for one assignment or underlease, 63.
forfeiture for breach of such conditions—how waived, 64.
for re-entry on nonpayment of rent by lessee, 68, 92.
See LICENSE, RE-ENTRY.
CONSIDERATION,
statement of in voluntary settlement, 565.
CONVEYANCE,
by lease and release, improper on the exercise of powers in settlement, 271.
COPYHOLDS,
settlement of, in strict settlement, 548.
CORPORATION,
aggregate, how far bound by a resolution not under seal, 96.
COVENANTS,
to be inserted in lease should be specified in agreement for, 13.
what are usual in leases, 14.
unusual in leases, 15.
proper in leases under powers, 16.
to pay rent implied by reddendum of leases, 30.
in leases to pay taxes—effect and extent of, 32—34.
See also TAXES.
covenant in lease as to carrying on trades and businesses.
See TRADES, NUISANCE.
in leases for quiet enjoyment. *See* QUIET ENJOYMENT.
to reside on the premises, 52.
to perform services and furnish produce to lessor, 55.
not to assign, &c., without license, 64.
with whom to be entered into in leases under powers, 75.
of donee of power of leasing bind remainderman, 76.
in leases relating to fixtures, 87.
insurance against and rebuilding in case of fire, 106.
in leases to repair, effect of in case of fire, 104.
and yield up in repair, how to be framed and construed, 114, 115.

COVENANTS—(*continued*).
by lessees, when to be joint and several, 125.
of mortgage lands to be made with the mortgagee *ib.*
with whom to be made in partition deeds, 224.
in partition deeds for seisin and the validity of powers, 225.
on partitions of leaseholds, 256.
indemnity in respect of, 255.
better than bonds for securing monies to be settled, 381.
as to proof on bankruptcy by trustees of settlement of monies secured by covenant, 396.
CREDITORS,
gain no lien by a settlement to which they are not parties, 648.
voluntary settlement void against, 587.

D.

DOWER,
effect and operation of clause in marriage settlements in bar of, 403.

E.

EASEMENTS,
how affected by partitions, 217.
See RIGHT OF WAY.
EVICTION,
right of re-entry on, incident to exchange, 268.
EXCEPTION,
distinguished from a reservation, 44.
requisites of, *ib.*
exception out of an exception, *ib.*
of woods and trees, 45.
extends to what trees, 46.
of term—when termor conveys, 24.
EXCHANGES,
general observations on, 260.
proper words to be used in, 269.
of charity lands under the act 1 & 2 Geo. 4, c. 92, 273—296, 306.
of church lands under statutes, 297—306.
See RE-ENTRY.

F.

FIRE INSURANCE,
covenants in leases to insure against fire, 105.
how such covenants should be framed, 106.

FIXTURES,
law of between landlord and tenant, 85—88.
what are, 85.
tenant cannot remove, except in particular cases, 86, 87.
express contracts between landlord and tenant relative to, 87.
when tenant's right to remove must be exercised, 87.

G.

GENERAL WORDS,
used in leases, 29.
in conveyance of land—effect of on rights of way, 184.
in partition deeds, 220.

GRANDCHILDREN. *See* ISSUE.

H.

HABENDUM,
of lease, how it should fix the commencement of the term, 30.

HOTCHPOT,
clause of, 319.
when the powers of appointment embrace issue of children, 399.

HUSBAND AND WIFE,
intended husband must be privy to all dispositions of his intended wife's property, 310.
separate use of wife—trust for, 316.
power of appointment given to the wife in marriage settlements in default of children, 323.
"next of kin" of wife—trust for improper, 323.
husband when entitled under such trust, *ib.*
settlement determining husband's interest on bankruptcy or insolvency, 368, 369.
wife's life interest in after-acquired property, how to be settled, 389.

HUSBAND AND WIFE—(*continued*).
wife's dower, how barred by settlement, 403.
legitim, how barred by settlement, 404.
provision for the second marriage of either surviving, 484.
wife's power to dispose of her savings, 486.

I.

INDEMNITY,
against rent and covenants on partition of leaseholds, 255.
to trustees, 327.
in respect of policies of assurance, 387.
purchase of land, 440.

INFANT,
settlement on marriage of female infant—how far binding on her, 455.
and of male infant, 456.
female, barred of dower by jointure, 456.
settlement on marriage of, when a ward of Chancery, 467—470.

INSURANCE. *See* FIRE INSURANCE.

INVESTMENT,
duty of trustees in absence of express trust for, 313.
of trust monies on real securities in Ireland, 312.
powers given by the usual trusts for, 313, 314.
power of altering and varying securities, *ib.*
on real securities, *ib.*
on personal security, 314.
consents required, to be given previously to, 315.
how far consent of tenant for life should be required for, 411.
losses occasioned by an improper investment—must be borne by trustees, 315.
of trust monies in purchase of land, 440.
when there ought to be no trust to invest on real securities, 642.
as to the deposit of trust monies in banks, 642.

ISSUE,
settlement for the issue of the children of a marriage, how far valid, 398.
and how to be framed, *ib.*

J.

JOINTURE. *See* RENT-CHARGE.

L.

LEASES,
general observations on the precedents of, 1.
by whom and at whose expense to be prepared, 4.
what words constitute a lease, 4.
instruments, whether leases, or agreements for leases, 4—10.
inexpediency of agreements for, 10.
nature of tenancy under agreements for, 10.
description of parcels in leases and agreements for building purposes, 12.
clauses and covenants to be inserted in, should e specified in the agreement for, 13.
what are usual covenants and clauses in, 14.
unusual covenants and clauses in, 15.
powers to grant building, rebuilding, and repairing leases, 533, 535.
what are proper covenants and clauses in leases under powers, 16.
apportionment of rent and liabilities in building leases, 28.
operative words of, 28.
parcels, mode of describing in, 29.
general words used in, 29.
from what time to be computed, 29.
how construed, when the duration is left uncertain, 30.
by executors—how rent to be reserved in, 31.
construction of privilege to use part of premises after expiration of, 82.
by corporation aggregate should be under seal, 96.
provisions in, relating to fire and insurance, 104—106.
repairs, 114, 115.
the use of adjoining land, 117.
by mortgagor and mortgagee, 120.
power to determine—how to be framed, 133.
in mining leases, 139.
of mines and minerals, 137—140.
power to grant, 527.
partition of leaseholds, 253, 255.
of lands taken in exchange by a parson, 304.
renewal of—trusts for in settlements 347, 350, 351.

LEASES—(*continued*).
should not be taken by trustees, 407.
powers of leasing, 527, 531, 533, 535.
entails of, 543.
See COVENANTS, LESSEE, LESSOR, LICENSE, QUIET ENJOYMENT.

LEGITIM,
under the law of Scotland, clause in bar of, 404.

LESSEE,
his right to require the production of the lessor's title, 16.
covenant by, to perform services and furnish produce for lessor, 55.
cannot remove fixtures, 86.
unless erected for ornament or domestic convenience, 86.
or for purposes of trade, 87.
must remove (when he has the right) during his term, 87.
as to giving him an option to purchase the fee, 94.
liability of, in case of fire, 104.
bound to pay rent, notwithstanding premises are burnt, 105.
his right to compel lessor to use adjoining property in a specified manner, 117.
covenants by lessees, when to be joint and several, 125.
of mortgaged lands should covenant with mortgagee, 125.
his right to mines and minerals, 137, 138.
trustee should not be, 407.
See FIRE INSURANCE, LEASE, WASTE, REPAIR.

LESSOR,
his obligation to produce his title to a lessee, 16.
covenant not to carry on trade without license of, 37.
covenants by lessee to perform services and furnish produce for, 55.
his right to fixtures, 85—88.
his property in demised fixtures, and right to distrain, 88.
his liabilities under a covenant to rebuild in case of fire, 106.
his obligations as to the use of his adjoining property, 117.
See LEASE.

LICENSE,
covenant in lease not to carry on trade without lessor's license, 37.
for a single assignment or underlease dispenses altogether with a condition against assignment and underletting, 63.

LICENSE—(*continued*).
what license required for such purpose, 64.
to get mines and minerals, 137.
to copyholders—power in settlement to grant, 539.
See CONDITION.

M.

MANOR,
partition of, 238.
MINES AND MINERALS,
general law relating to, 137.
leases of—law relating to, 137—140.
power to grant, 527.
MORTGAGE,
leases of lands in, 120.
in leases of mortgaged lands, the lessee's covenants to be entered into with the mortgagee, 125.

N.

NUISANCE,
at common law, 90.
injunctions to restrain, 91.
See QUIET ENJOYMENT.

O.

OPERATIVE WORDS,
in leases, 28.
of exchange deeds, 269.
OPTION,
in leases for the lessee to purchase, 94.
to determine the lease, 133.

P.

PARCELS,
mode of describing in leases, 29.
in partition deeds, 212, 246.
PARTITION,
general observations on, 209.
recitals in partition deeds, 211.

PARTITION—(*continued*).
parcels in partition deeds, 212, 246.
effect of on easements enjoyed by the occupiers of one estate over the other, 217.
with whom the covenants in partition deeds should be entered into, 224.
of a manor, 338.
of an advowson, 240.
of leaseholds, 253.
indemnity on, against rent and covenants, 255.
covenants in deeds of, 256.
powers of, 625.
POLICIES OF ASSURANCE,
against loss by fire. *See* FIRE INSURANCE.
settlement of, 382.
settled—bonuses on included in trusts, 383.
indemnity to trustees in respect of, 387.
action on covenant not to vitiate, 453.
PORTIONS,
satisfaction of by advancement, 518.
power to raise in the lifetime of the father, 519.
power in settlements to charge, 521.
POWER OF ATTORNEY,
receipt given under—not equivalent to receipt under trustees' power, 393.
special—when to be used, 646.
POWERS,
leases under—should contain what clauses and covenants, 16.
observations on, 71.
how rent should be reserved in, 73.
with whom the lessee should covenant in, 75.
remainderman bound by the covenants of a donee of a power of leasing, 76.
of re-entry, how to be reserved in leases under, 81.
to determine leases—how to be framed, 133.
to determine mining leases, 139.
mode of exercising, 213, 214, 262.
of sale, exchange, or partition, when exercised, not to be corroborated by conveyance, 271.
in marriage settlements to appoint to children, 318.
of advancement, 320.

POWERS—(*continued*).
in marriage settlements, of maintenance and education, 321.
of accumulation, 321.
of appointing new trustees, 326, 328.
to appoint to grandchildren and remoter descendants, 398.
to jointure, 521.
of distress and entry, 504, 577.
to charge portions, 521, 524.
to grant mining leases, 527.
of leasing—construction and exercise of, 531.
to grant building, rebuilding, and repairing leases, 533, 535.
to grant licenses to copyholders, 539.
of partition, 625.
of enfranchisement, 626.
of sale and exchange, 539, 541, 546, 625, 626.
may be kept on foot after a resettlement, 562.
should protect strangers from seeing to the necessity or propriety of the exercise, 649.
to female tenants for life of appointing rent-charges to husband, 622.
See RECEIPT, RE-ENTRY, TRUSTEES.

PREMISES,
peculiar use and meaning of the word, 304.

PURCHASE,
option in leases for lessee to purchase, 94.
of lands by trustees, 440.

Q.

QUIET ENJOYMENT,
meaning of " term " in covenant in lease for, 39.
implied from the words of demise, unless superseded by an express covenant, 40.
difference of express and implied covenants for, 40.
construction of express covenants for, 40.
in underleases, 41.
payment of rent, not a condition precedent to the performance of, 41.
effect of covenant for, on the lessor's right to use his adjoining lands, 117.
See NUISANCE.

R.

RECEIPT,
power of trustees to give, 324.
should be extended to the arrangement of accounts, 427.
under a power of attorney, and the usual trustees' power to give—distinction hetween, 393.
given by trustees covers only money actually paid, 427.
of trustees having power to raise money by mortgage, 461.
power of trustees to give for money paid on enfranchisement, 536, 627.
general powers in strict settlements for trustees to give, 548, 627.
RECITALS,
when introduced after one of the operative parts of a deed, 67.
in leases under powers, 71.
in underleases, 95.
in partition deeds, 211.
in exchange deeds, 261.
in settlements, 307, 310.
narrative, 357.
REDDENDUM,
of lease implies a covenant for payment of rent, unless there be an express covenant, 30.
form of on leases by executors, 31.
general form of, 49, 50.
See RENT, TITHES, RESERVATION.
RE-ENTRY,
construction of conditions for re-entry on assignment by lessee, without license, 64.
condition for on nonpayment of rent by lessee, 68.
nonpayment of rent should dispense with the necessity of a demand, 92.
how to be framed in leases under powers, 681.
the right of on eviction should be negatived in exchange deeds, 268.
See CONDITION, LICENSE.
REMAINDER,
form of conveyance of, 557.
trust to preserve contingent remainders, 502.
where successive life estates are limited, 558.

RENT,
apportionment of in building leases, where two or more houses are comprised in the lease, 28.
covenant for payment of, if not expressed, is implied by the reddendum, 30.
reservation of on leases by executors, 31.
payment of, not a condition precedent to the performance of the covenant for quiet enjoyment, 41.
at what times payable, 47.
at what times it should be made payable, 48.
penal for changing the nature of the land, 49.
on what acts payable, 49.
not waived by acceptance of original rent, 50.
equitable relief in respect of, 50.
how to be reserved in leases under powers, 78.
when the lessor has not the absolute reversion, *ib.*
demand of, before re-entry for nonpayment of, 68.
should be dispensed with by the condition, 92.
apportionment of in respect of time, 110.
as to the payment of by bills of exchange, &c., 136.
reservation of in mining leases, 138.
indemnity against in partition of leaseholds, 255.
See RE-ENTRY, REDDENDUM, RESERVATION.
RENT-CHARGES,
apportionment of on partition of the subject lands, 223.
when very small, 251.
jointure rent-charges—the powers and remedies annexed to, 504, 577.
power in settlements to appoint for jointures, 521.
how to be created and secured when no further settlement is intended, 575.
RENEWAL,
of settled leases, costs of—how to be raised and apportioned, 350.
trustees directed to renew leases are liable for omission, 351.
REPAIR,
as to the provision for in leases, 114, 115.
by whom ways are to be repaired, 183.
as to the repair of machines demised, 204.
RESERVATION,
distinguished from an exception, 44.

RESERVATION—(*continued*).
law relating to reservations, 45.
of a right of entry to cut trees, *ib.*
of proportion of minerals as rent, 138.
See REDDENDUM, RENT.

REVERSIONS,
trusts for sale of, 444.
form of conveyance of, 557.

RIGHT OF WAY,
title to by express grant, 178.
necessity, 179.
prescription, 180.
under statute of limitations, 181.
how to be exercised, 183.
how extinguished and revived, 185.
as to the repair of ways subject to, 183.
by what general words it will pass in a conveyance, 184.
miscellaneous points relating to, 186.
how affected by partition of estates, 217.

S.

SECURITIES,
real—intended to be settled should be assigned to the trustees by a separate deed, 333.
which must contain a power of appointing new trustees, 341.
See INVESTMENT.

SEPARATE USE,
of wife—trust in marriage settlement for, 316.
with restriction on anticipation, 317.

SETTLEMENTS,
of personal estate, general observations on, 307.
of real estate, general observations on, 308, 496.
to be sold, 341, 428.
marriage, recitals of, 307, 310, 357.
of an intended wife's property—intended husband must be privy to, 310.
trusts in for investment, 312, 313.
for separate use of married women, 316, 317.
marriage of personal estate, usual trusts in for children, 318.
marriage, hotchpot clause in, 319.

SETTLEMENTS—(*continued*).
marriage, provision in for advancement of children, 320.
for maintenance and education of children, 321.
for accumulation, 322.
trusts of in default of children, 322.
of monies payable under a term of years, 330.
of monies secured on lands, 333, 341.
of land to be divided among children, 341, 560.
trusts in for the renewal of leaseholds, 347, 350, 351.
restraining the right of alienation, 367, 368.
in regard to bankruptcy and insolvency of husband, 368, 369, 381, 396.
covenant better than bond for securing future payment to the trustees of, 381.
trusts of, when to be declared by reference, 382.
on marriage extending to remoter descendants than children, 398.
with clause of survivorship and accruer when to be used, 435.
power for the survivor of the husband and wife to make on second marriage, 486.
of leaseholds in strict settlement, 543.
of copyholds, 547.
as to keeping powers of on foot after a resettlement, 562.
voluntary, 587.
not aided in equity, 603.
shares settled should be transferred to trustees, 602.
strict settlement, meaning of, 609.
order of limitations in, 615.
instructions for, how to be effectuated, 610.
chattels, how to be settled in, by way of heir-looms, 635.
for benefit of creditors not parties, gives them no lien, 648.
See ARTICLES, CHILDREN, INFANT, INVESTMENT, POWERS, RECEIPT, TRUSTEES, RENEWAL, RENT-CHARGES, WARDS IN CHANCERY.

SOLICITOR,
of a trustee cannot charge for professional business done for the trust estate, 651.
unless by express direction, *ib.*

SURVIVORSHIP AND ACCRUER,
clause of—when used in settlements, 435.
effect and necessity of, 437.

T.

TAXES,
covenant to pay—extends to future as well as existing taxes, 32.
includes what taxes, 33.
land-tax, 33.
whether it includes sewers' rate, 33.
effect of, as to drainage taxes, 34.

TENANCY,
at will, nature of, 24.

TERM,
of lease—from what date to be computed, 30.
meaning of, in covenant for quiet enjoyment, 39.
exception of, from conveyance, when the termor conveys, 247.
assignment of attendant term by principal deed, 251.
for securing jointure rent-charges, 504.
proviso for cesser of, 508.
merger of, 614.

TITHES,
commutation for—how to be dealt with in leases, 51.

TRADES,
covenant in lease against carrying on—generally, 36.
specified trades, 36.
offensive trades, 37.
without lessor's license, 37.

TREES,
exception of, from lease, 45.
includes what trees, 46.
effect of reservation of right of entry to cut, 45.
property in, when not excepted from lease, 46.

TRUST,
for sale—of a reversionary estate, 444.
to preserve contingent remainders, 502.

TRUSTEES,
should be empowered to give receipts, 324, 536.

TRUSTEES—(*continued*).
and whether they have a power of attorney or not, 393.
of real estate in strict settlement—their power to give receipts, 548.
who are proper persons to be in a settlement of real estate, 551.
power of appointing new, 326, 328.
in settlements containing more than one set of trustees, 550.
indemnity to, 327.
in respect of policies of assurance, 387.
purchases of land, 439.
expenses of to be paid, 328.
not entitled to compensation for trouble, *ib.*
powers of appointing new—in deeds of even date with settlements, 341.
their duties in respect of renewable leaseholds, 347, 350.
are liable for omission to renew leases when, 351.
should not be lessees, 407.
should have power to settle accounts and compromise, 427.
See SECURITIES, SETTLEMENT, SOLICITOR, INVESTMENT.

U.

UNDERLEASES,
construction of covenants for quiet enjoyment in, 41.
restriction on underletting. *See* CONDITION.
as to recital in of original lease, 95.
USES,
should not be declared by reference to uses previously declared by the same instrument, 231.

W.

WARD OF CHANCERY,
not allowed to marry without a proper settlement, 467.
marriage of without consent of court a contempt, 468.
settlement of property of after a marriage in contempt, 468, 469.
WASTE,
by changing the nature of the land, 50.
the purpose of a mill, 51.
what is, 613.

WASTE—(*continued*).
wilful or voluntary by tenant for life, 613.
by tenant for life, 615.
WAYLEAVE,
meaning of the term, 178.
See RIGHT OF WAY.
WEIGHTS AND MEASURES,
abolition of local and customary, 146.
WILL,
tenancy at, 24.

Stanford Law Library
3 6105 062 007 617